



Companies Act 1989

1989 CHAPTER 40

An Act to amend the law relating to company accounts; to make new provision with respect to the persons eligible for appointment as company auditors; to amend the Companies Act 1985 and certain other enactments with respect to investigations and powers to obtain information and to confer new powers exercisable to assist overseas regulatory authorities; to make new provision with respect to the registration of company charges and otherwise to amend the law relating to companies; to amend the Fair Trading Act 1973; to enable provision to be made for the payment of fees in connection with the exercise by the Secretary of State, the Director General of Fair Trading and the Monopolies and Mergers Commission of their functions under Part V of that Act; to make provision for safeguarding the operation of certain financial markets; to amend the Financial Services Act 1986; to enable provision to be made for the recording and transfer of title to securities without a written instrument; to amend the Company Directors Disqualification Act 1986, the Company Securities (Insider Dealing) Act 1985, the Policyholders Protection Act 1975 and the law relating to building societies; and for connected purposes. [16th November 1989]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent Information

E1 Act extends to Great Britain, but for exceptions see [s. 213](#).

Modifications etc. (not altering text)

C1 Act modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), arts. 1, 3, [Sch.](#)

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PART I

COMPANY ACCOUNTS

Introduction

1 Introduction.

F1

Textual Amendments

F1 S. 1 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

Provisions applying to companies generally

2 Accounting records.

F2

Textual Amendments

F2 S. 2 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

3 A company's financial year and accounting reference periods.

F3

Textual Amendments

F3 S. 3 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

4 Individual company accounts.

F4

Textual Amendments

F4 S. 4 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

5 Group accounts.

F5

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Textual Amendments

F5 S. 5 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

6 Additional disclosure required in notes to accounts.

F6

Textual Amendments

F6 S. 6 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

7 Approval and signing of accounts.

F7

Textual Amendments

F7 S. 7 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

8 Directors' report.

F8

Textual Amendments

F8 S. 8 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

9 Auditors' report.

F9

Textual Amendments

F9 S. 9 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

10 Publication of accounts and reports.

F10

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Textual Amendments

- F10** S. 10 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

11 Laying and delivering of accounts and reports.

F11

Textual Amendments

- F11** S. 11 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

12 Remedies for failure to comply with accounting requirements.

F12

Textual Amendments

- F12** S. 12 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

Exemptions and special provisions

13 Small and medium-sized companies and groups.

F13

Textual Amendments

- F13** S. 13 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

14 Dormant companies.

F14

Textual Amendments

- F14** S. 14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

15 Public listed companies: provision of summary financial statement.

F15

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Textual Amendments

F15 S. 15 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

16 Private companies: election to dispense with laying of accounts and reports before general meeting.

F16

Textual Amendments

F16 S. 16 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

17 Unlimited companies: exemption from requirement to deliver accounts and reports.

F17

Textual Amendments

F17 S. 17 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

18 Banking and insurance companies and groups: special provisions.

F18

Textual Amendments

F18 S. 18 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

Supplementary provisions

19 Accounting standards.

F19

Textual Amendments

F19 S. 19 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

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20 Power to alter accounting requirements.

F20

Textual Amendments

F20 S. 20 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

21 Parent and subsidiary undertakings.

F21

Textual Amendments

F21 S. 21 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

22 Other interpretation provisions.

F22

Textual Amendments

F22 S. 22 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

Consequential amendments

23 Consequential amendments.

The enactments specified in Schedule 10 have effect with the amendments specified there, which are consequential on the amendments made by the preceding provisions of this Part.

PART II

ELIGIBILITY FOR APPOINTMENT AS COMPANY AUDITOR

Modifications etc. (not altering text)

C2 Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (20.10.1993) by 1993 c. xi, **ss. 1(2)**, 6(4)
 Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (21.7.1993) by S.I. 1993/1820, reg. 4, **Sch. para.3**
 Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (19.12.1993) by S.I. 1993/3245, **reg.3(5)**
 Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (28.5.1994) by S.I. 1994/1440, **art. 37(1)(2)** (with arts. 38, 39)

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- C3 Pt. 2 (ss. 24-54) applied (with modifications) (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), regs. {3(6)}, {4(5)}
- C4 Pt. 2 (ss. 24-54) applied (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 14(1)**
- C4 Pt. II (ss. 24-54) extended (9.2.2005) by The European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18), **reg. 11(6)** (with reg. 3)
- C5 Pt. 2 (ss. 24-54): functions of the Secretary of State transferred to the designated body (E.W.S) (5.9.2005) by The Companies Act 1989 (Delegation) Order 2005 (S.I. 2005/2337), **art. 3** (with arts. 7-10)

Introduction

24 Introduction.

F23

Textual Amendments

- F23 S. 24 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

Eligibility for appointment

25 Eligibility for appointment.

F24

Textual Amendments

- F24 S. 25 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 37(2))

26 Effect of appointment of partnership.

F25

Textual Amendments

- F25 S. 26 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 37(2))

27 Ineligibility on ground of lack of independence.

F26

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Textual Amendments

F26 S. 27 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 37(2))

28 Effect of ineligibility.

F27

Textual Amendments

F27 S. 28 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 37(2))

29 Power of Secretary of State to require second audit.

F28

Textual Amendments

F28 S. 29 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

Recognition of supervisory bodies and professional qualifications

30 Supervisory bodies.

F29

Textual Amendments

F29 S. 30 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

31 Meaning of “appropriate qualification”.

F30

Textual Amendments

F30 S. 31 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

32 Qualifying bodies and recognised professional qualifications.

F31

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Textual Amendments

F31 S. 32 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

33 Approval of overseas qualifications.

F32

Textual Amendments

F32 S. 33 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2)(3))

34 Eligibility of individuals retaining only 1967 Act authorisation.

F33

Textual Amendments

F33 S. 34 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

Duties of recognised bodies

35 The register of auditors.

F34

Textual Amendments

F34 S. 35 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

36 Information about firms to be available to public.

F35

Textual Amendments

F35 S. 36 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

37 Matters to be notified to the Secretary of State.

F36

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Textual Amendments
F36 S. 37 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 39)

38 Power to call for information.

F37

Textual Amendments
F37 S. 38 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 39)

39 Compliance orders.

F38

Textual Amendments
F38 S. 39 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

40 Directions to comply with international obligations.

F39

Textual Amendments
F39 S. 40 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

Offences

41 False and misleading statements.

F40

Textual Amendments
F40 S. 41 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

42 Offences by bodies corporate, partnerships and unincorporated associations.

F41

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Textual Amendments

F41 S. 42 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

43 Time limits for prosecution of offences.

F42

Textual Amendments

F42 S. 43 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

44 Jurisdiction and procedure in respect of offences.

F43

Textual Amendments

F43 S. 44 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

Supplementary provisions

45 Fees.

F44

Textual Amendments

F44 S. 45 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

46 Delegation of functions of Secretary of State.

F45

Textual Amendments

F45 S. 46 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 42(1))

[^{F46}**46A Circumstances in which Secretary of State may delegate functions to existing body**

F47]

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Textual Amendments

- F46** S. 46A inserted (1.1.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 4, 65; S.I. 2004/3322, **art. 2(1)**, Sch. 1
- F47** S. 46A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 42(1))

47 Restrictive practices.

F48

Textual Amendments

- F48** S. 47 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

48 Exemption from liability for damages.

F49

Textual Amendments

- F49** S. 48 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

49 Service of notices.

F50

Textual Amendments

- F50** S. 49 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

50 Power to make consequential amendments.

F51

Textual Amendments

- F51** S. 50 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12) (with saving in S.I. 2008/948, arts. 2(2), 10)

51 Power to make provision in consequence of changes affecting accountancy bodies.

F52

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Textual Amendments

F52 S. 51 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

52 Meaning of “associate”.

F53

Textual Amendments

F53 S. 52 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(3))

53 Minor definitions.

F54

Textual Amendments

F54 S. 53 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(3))

54 Index of defined expressions.

F55

Textual Amendments

F55 S. 54 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(3))

PART III

INVESTIGATIONS AND POWERS TO OBTAIN INFORMATION

Amendments of the Companies Act 1985

55 Investigations by inspectors not leading to published report.

In section 432 of the ^{M1}Companies Act 1985 (appointment of inspectors by Secretary of State), after subsection (2) (investigation of circumstances suggesting misconduct) insert—

“(2A) Inspectors may be appointed under subsection (2) on terms that any report they may make is not for publication; and in such a case, the provisions

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of section 437(3) (availability and publication of inspectors' reports) do not apply.”.

Marginal Citations

M1 1985 c. 6.

56 Production of documents and evidence to inspectors.

- (1) Section 434 of the Companies Act 1985 (production of documents and evidence to inspectors) is amended as follows.
- (2) In subsection (1) (duty of officers to assist inspectors), for “books and documents” substitute “documents”.
- (3) For subsection (2)(power to require production of documents, attendance or other assistance) substitute—
 - “(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him—
 - (a) to produce to them any documents in his custody or power relating to that matter,
 - (b) to attend before them, and
 - (c) 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.”.
- (4) For subsection (3) (power to examine on oath) substitute—
 - “(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.”.
- (5) After subsection (5) insert—
 - “(6) In this section “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.”.
- (6) In section 436 of the ^{M2}Companies Act 1985 (obstruction of inspectors treated as contempt of court), for subsections (1) and (2) substitute—
 - “(1) If any person—
 - (a) fails to comply with section 434(1)(a) or (c),
 - (b) refuses to comply with a requirement under section 434(1)(b) or (2), or
 - (c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,
 the inspectors may certify that fact in writing to the court.”.

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Marginal Citations

M2 1985 c. 6.

57 Duty of inspectors to report.

In section 437 of the Companies Act 1985 (inspectors' reports), after subsection (1A) insert—

“(1B) If it appears to the Secretary of State that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, he may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(1C) Where an investigation is the subject of a direction under subsection (1B), the inspectors shall make a final report to the Secretary of State only where—

- (a) they were appointed under section 432(1) (appointment in pursuance of an order of the court), or
- (b) the Secretary of State directs them to do so.”.

58 Power to bring civil proceedings on the company's behalf.

F56

Textual Amendments

F56 S. 58 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(c), Sch. 4 Pt. 1

59 Expenses of investigating a company's affairs.

(1) Section 439 of the Companies Act 1985 (expenses of investigating a company's affairs) is amended as follows.

(2) For subsection (1) substitute—

“(1) The expenses of an investigation under any of the powers conferred by this Part shall be defrayed in the first instance by the Secretary of State, but he may recover those expenses from the persons liable in accordance with this section.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.”.

(3) In subsection (4) for “the inspectors' report” substitute “an inspectors' report”.

(4) For subsection (5) substitute—

“(5) Where inspectors were appointed—

- (a) under section 431, or

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(b) on an application under section 442(3),
the applicant or applicants for the investigation is or are liable to such extent
(if any) as the Secretary of State may direct.”.

60 Power of Secretary of State to present winding-up petition.

- (1) Section 440 of the ^{M3}Companies Act 1985 (power of Secretary of State to present winding-up petition) is repealed; but the following amendments have the effect of re-enacting that provision, with modifications.
- (2) In section 124(4) of the ^{M4}Insolvency Act 1986 (application by Secretary of State for company to be wound up by the court), for paragraph (b) substitute—
“(b) in a case falling within section 124A below.”.
- (3) After that section insert—

“124A Petition for winding up on grounds of public interest.

- (1) Where it appears to the Secretary of State from—
 - (a) any report made or information obtained under Part XIV of the Companies Act 1985 (company investigations, &c.),
 - (b) any report made under section 94 or 177 of the Financial Services Act 1986 or any information obtained under section 105 of that Act,
 - (c) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or
 - (d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),
 that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.
- (2) This section does not apply if the company is already being wound up by the court.”.

Marginal Citations

M3 1985 c. 6.

M4 1986 c. 45.

61 Inspectors’ reports as evidence.

In section 441 of the Companies Act 1985 (inspectors’ reports to be evidence), in subsection (1) for “sections 431 or 432” substitute “ this Part ”.

62 Investigation of company ownership.

In section 442 of the Companies Act 1985 (power to investigate company ownership), for subsection (3) (investigation on application by members of company) substitute—

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“(3) If an application for investigation under this section with respect to particular shares or debentures of a company is made to the Secretary of State by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under section 431(2)(a) or (b), then, subject to the following provisions, the Secretary of State shall appoint inspectors to conduct the investigation applied for.

(3A) The Secretary of State shall not appoint inspectors if he is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Secretary of State is satisfied that it is unreasonable for it to be investigated.

(3B) The Secretary of State may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as he may by order specify, for payment of the costs of the investigation.

An order under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3C) If on an application under subsection (3) it appears to the Secretary of State that the powers conferred by section 444 are sufficient for the purposes of investigating the matters which inspectors would be appointed to investigate, he may instead conduct the investigation under that section.”.

63 Secretary of State’s power to require production of documents.

F57

Textual Amendments

F57 S. 63 repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 64, 65, Sch. 8; S.I. 2004/3322, art. 2(2), Sch. 2 (subject to transitional provisions in arts. 4-13)

64 Entry and search of premises.

(1) For section 448 of the Companies Act 1985 (entry and search of premises) substitute—

“448 Entry and search of premises.

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.

(2) A justice of the peace may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part—

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- (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
 - (b) that the Secretary of State, or the person so appointed or authorised, has power to require the production of the documents under this Part, and
 - (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.
- (3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—
- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
 - (c) to take copies of any such documents; and
 - (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) If in the case of a warrant under subsection (2) the justice of the peace is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in subsection (3) to be taken in relation to such documents.
- (5) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
 - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of an offence and liable to a fine.

Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.

- (8) For the purposes of sections 449 and 451A (provision for security of information) documents obtained under this section shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.

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(9) In the application of this section to Scotland for the references to a justice of the peace substitute references to a justice of the peace or a sheriff, and for the references to information on oath substitute references to evidence on oath.

(10) In this section “document” includes information recorded in any form.”.

(2) In Schedule 24 to the ^{M5}Companies Act 1985 (punishment of offences), in the entry relating to section 448(5)—

(a) in the first column for “448(5)” substitute “448(7)”, and

(b) for the entry in the second column substitute—

“Obstructing the exercise of any rights conferred by a warrant or failing to comply with a requirement imposed under subsection (3) (d).”.

Marginal Citations

M5 1985 c. 6.

65 Provision for security of information obtained.

F58

Textual Amendments

F58 S. 65 repealed (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004](#) (c. 27), ss. 64, 65, [Sch. 8](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (subject to transitional provisions in [arts. 4-13](#))

66 Punishment for destroying, mutilating, &c. company documents.

(1) Section 450 of the ^{M6}Companies Act 1985 (punishment for destroying, mutilating, &c. company documents) is amended as follows.

(2) In subsection (1) for the opening words down to “insurance company” substitute “An officer of a company, or of an insurance company”, for “body’s” substitute “company’s” and for “the body” substitute “the company”.

(3) For subsection (4) substitute—

“(4) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under this section.”.

(4) After that subsection insert—

“(5) In this section “document” includes information recorded in any form.”.

Marginal Citations

M6 1985 c. 6.

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67 Punishment for furnishing false information.

F59

Textual Amendments

F59 S. 67 repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 64, 65, Sch. 8; S.I. 2004/3322, art. 2(2), Sch. 2 (with transitional provisions in arts. 4-13)

68 Disclosure of information by Secretary of State or inspector.

For section 451A of the Companies Act 1985 (disclosure of information by the Secretary of State) substitute—

“451A Disclosure of information by Secretary of State or inspector.

- (1) This section applies to information obtained under sections 434 to 446.
- (2) The Secretary of State may, if he thinks fit—
 - (a) disclose any information to which this section applies to any person to whom, or for any purpose for which, disclosure is permitted under section 449, or
 - (b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.
- (3) Information to which this section applies may also be disclosed by an inspector appointed under this Part to—
 - (a) another inspector appointed under this Part or an inspector appointed under section 94 or 177 of the Financial Services Act 1986, or
 - (b) a person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of this Act, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989.
- (4) Any information which may by virtue of subsection (3) be disclosed to any person may be disclosed to any officer or servant of that person.
- (5) The Secretary of State may, if he thinks fit, disclose any information obtained under section 444 to—
 - (a) the company whose ownership was the subject of the investigation,
 - (b) any member of the company,
 - (c) any person whose conduct was investigated in the course of the investigation,
 - (d) the auditors of the company, or
 - (e) any person whose financial interests appear to the Secretary of State to be affected by matters covered by the investigation.”.

69 Protection of banking information.

- (1) Section 452 of the ^{M7}Companies Act 1985 (privileged information) is amended as follows.

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(2) ^{F60}

(3) After that subsection insert—

“(1A) Nothing in section 434, 443 or 446 requires a person (except as mentioned in subsection (1B) below) to disclose information or produce documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed is the company or other body corporate under investigation,
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (c) the making of the requirement is authorised by the Secretary of State.

(1B) Subsection (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under section 431, 432 or 433.”.

(4) ^{F60}

Textual Amendments

F60 S. 69(2)(4) repealed (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), ss. 64, 65, [Sch. 8](#); S.I. 2004/3322, [art. 2\(2\)](#), [Sch. 2](#) (with transitional provisions in arts. 4-13)

Marginal Citations

M7 1985 c. 6.

70 Investigation of overseas companies.

In section 453 of the Companies Act 1985 (investigation of overseas companies), for subsection (1) substitute—

“(1) The provisions of this Part apply to bodies corporate incorporated outside Great Britain which are carrying on business in Great Britain, or have at any time carried on business there, as they apply to companies under this Act; but subject to the following exceptions, adaptations and modifications.

(1A) The following provisions do not apply to such bodies—

- (a) section 431 (investigation on application of company or its members),
- (b) section 438 (power to bring civil proceedings on the company’s behalf),
- (c) sections 442 to 445 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and
- (d) section 446 (investigation of share dealings).

(1B) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be specified by regulations made by the Secretary of State.”.

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71 Investigation of unregistered companies.

In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), for the entry relating to Part XIV substitute—

“Part XIV (except section 446)	Investigation of companies —” and their affairs; requisition of documents.
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Amendments of the Financial Services Act 1986

^{F61}72

Textual Amendments
F61 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

^{F62}73

Textual Amendments
F62 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

^{F63}74

Textual Amendments
F63 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

^{F64}75

Textual Amendments
F64 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

^{F65}76

Textual Amendments
F65 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

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Amendments of other enactments

F6677

Textual Amendments

F66 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F6778

Textual Amendments

F67 S. 78 repealed (2.4.2001) by 2000 c. 39, s. 15, Sch. 5; S.I. 2001/766, art. 2(c)(iii)

F6879

Textual Amendments

F68 S. 79 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(b)

80 Amendment of the Building Societies Act 1986.

In section 53 of the ^{M8}Building Societies Act 1986 (confidentiality of information obtained by the Building Societies Commission), in subsection (7)(b) (functions of Secretary of State for purposes of which disclosure may be made) after subparagraph (ii) insert—

“, or
(iii) Part II, III or VII of the Companies Act 1989;”.

Commencement Information

II S. 80 wholly in force at 25.4.1991 see s. 215 and S.I. 1990/142 and 1991/878, art. 2, Sch.

Marginal Citations

M8 1986 c. 53.

F6981

Textual Amendments

F69 S. 81 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(c)

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Powers exercisable to assist overseas regulatory authorities

82 Request for assistance by overseas regulatory authority.

- (1) The powers conferred by section 83 are exercisable by the Secretary of State for the purpose of assisting an overseas regulatory authority which has requested his assistance in connection with inquiries being carried out by it or on its behalf.
- (2) An “overseas regulatory authority” means an authority which in a country or territory outside the United Kingdom exercises—
 - ^{F70}(a) any function corresponding to—
 - (i) any function of the Secretary of State under the Companies Act 1985 [^{F71}or the Companies Act 2006];
 - (ii) any function of the Financial Services Authority under the Financial Services and Markets Act 2000;
 - (iii) any function exercised by the competent authority under Part VI of that Act ^{F72}. . . ;]
 - (b) any function in connection with the investigation of, or the enforcement of rules (whether or not having the force of law) relating to, conduct of the kind prohibited by [^{F73}Part V of the Criminal Justice Act 1993 (insider dealing)], or
 - (c) any function prescribed for the purposes of this subsection by order of the Secretary of State, being a function which in the opinion of the Secretary of State relates to companies or financial services.

An order under paragraph (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) The Secretary of State shall not exercise the powers conferred by section 83 unless [^{F74}he and the Financial Services Authority are] satisfied that the assistance requested by the overseas regulatory authority is for the purposes of its regulatory functions.

An authority’s “regulatory functions” means any functions falling within subsection (2) and any other functions relating to companies or financial services.

- (4) In deciding whether to exercise those powers the Secretary of State may take into account, in particular—
 - (a) whether corresponding assistance would be given in that country or territory to an authority exercising regulatory functions in the United Kingdom;
 - (b) whether the inquiries relate to the possible breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
 - (c) the seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in the United Kingdom and whether the assistance could be obtained by other means;
 - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (5) Before deciding whether to exercise those powers in a case where the overseas regulatory authority is a banking supervisor, the Secretary of State shall consult the [^{F75}Financial Services Authority].

A “banking supervisor” means an overseas regulatory authority with respect to which the [^{F75}Financial Services Authority] has notified the Secretary of State, for the purposes of this subsection, that it exercises functions corresponding to those of the

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[^{F76}Authority][^{F77} in relation to authorised persons with permission under the Financial Services and Markets Act 2000 to accept deposits].

[^{F78}(5A) In subsection (5), “authorised person” has the meaning given in the Financial Services and Markets Act 2000 and the references to deposits and their acceptance must be read with—

- (a) section 22 of that Act;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

(6) The Secretary of State may decline to exercise those powers unless the overseas regulatory authority undertakes to make such contribution towards the costs of their exercise as the Secretary of State considers appropriate.

(7) References in this section to financial services include, in particular, investment business, insurance and banking.

Textual Amendments

- F70** S. 82(2)(a) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 76(2)
- F71** Words in s. 82(2)(a)(i) inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), [art. 2\(2\)](#), [Sch. 1 para. 157](#)
- F72** Words in s. 82(2)(a)(iii) omitted (1.7.2005) by virtue of [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), [reg. 2\(3\)](#), [Sch. 3 para. 1](#)
- F73** Words in s. 82(2)(b) substituted (1.3.1994) by 1993 c. 36, s. 79(13), [Sch. 5 Pt. I para. 16](#); [S.I. 1994/242](#), [art. 2](#), [Sch.](#)
- F74** Words in s. 82(3) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 76(3)
- F75** Words in s. 82(5) substituted (1.6.1998) by 1998 c. 11, s. 23, [Sch. 5 Pt. IV](#) c. II para. 66(2)(b)(i); [S.I. 1998/1120](#), [art. 2](#)
- F76** Word in s. 82(5) substituted (1.6.1998) by 1998 c. 11, s. 23, [Sch. 5 Pt. IV](#) c. II para. 66(2)(b)(ii); [S.I. 1998/1120](#), [art. 2](#)
- F77** Words in the definition of “banking supervisor” in s. 82(5) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 76(4)
- F78** S. 82(5A) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 76(5)

Modifications etc. (not altering text)

- C6** S. 82(3): (7.6.1992) certain functions made exercisable concurrently by the Secretary of State and the Treasury by [S.I. 1992/1315](#), [arts. 5](#), 8, [Sch. 3 para. 3](#) (with [art. 6](#)).

83 Power to require information, documents or other assistance.

(1) The following powers may be exercised in accordance with section 82, if the Secretary of State considers there is good reason for their exercise.

(2) The Secretary of State may require any person—

- (a) to attend before him at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the inquiries,
- (b) to produce at a specified time and place any specified documents which appear to the Secretary of State to relate to any matter relevant to the inquiries, and
- (c) otherwise to give him such assistance in connection with the inquiries as he is reasonably able to give.

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- (3) The Secretary of State may examine a person on oath and may administer an oath accordingly.
- (4) Where documents are produced the Secretary of State may take copies or extracts from them.
- (5) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session, except that a lawyer may be required to furnish the name and address of his client.
- (6) A statement by a person in compliance with a requirement imposed under this section may be used in evidence against him.
- [^{F79}(6A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—
- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (6B) Subsection (6A) applies to any offence other than—
- (a) an offence under section 85;
- (b) an offence under section 2 or 5 of the ^{M9}Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath);
- (c) an offence under section 44(1) or (2) of the ^{M10}Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath); or
- (d) an offence under Article 7 or 10 of the ^{M11}Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).]
- (7) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.
- (8) In this section “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.

Textual Amendments

F79 S. 83(6A)(6B) inserted (14.4.2000 for E.W., N.I. and 1.1.2001 for S.) by 1999 c. 23, s. 59, **Sch. 3 para.21** (with s. 63(2), **Sch. 7 paras. 3(3), 5(2)**); S.I. 2000/1034, **arts. 2(a), 3(2)**; S.S.I. 2000/445, **art. 2**

Marginal Citations

M9 1911 c. 6.

M10 1995 c. 39.

M11 S.I. 1979/1714 (N.I. 19).

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84 Exercise of powers by officer, &c.

- (1) The Secretary of State may authorise an officer of his or any other competent person to exercise on his behalf all or any of the powers conferred by section 83.
- (2) No such authority shall be granted except for the purpose of investigating—
 - (a) the affairs, or any aspects of the affairs, of a person specified in the authority, or
 - (b) a subject-matter so specified,being a person who, or subject-matter which, is the subject of the inquiries being carried out by or on behalf of the overseas regulatory authority.
- (3) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.
- (4) A person shall not by virtue of an authority under this section be required to disclose any information or produce any documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
 - (a) the imposing on him of a requirement with respect to such information or documents has been specifically authorised by the Secretary of State, or
 - (b) the person to whom the obligation of confidence is owed consents to the disclosure or production.In this subsection “documents” has the same meaning as in section 83.
- (5) Where the Secretary of State authorises a person other than one of his officers to exercise any powers by virtue of this section, that person shall make a report to the Secretary of State in such manner as he may require on the exercise of those powers and the results of exercising them.

85 Penalty for failure to comply with requirement, &c.

- (1) A person who without reasonable excuse fails to comply with a requirement imposed on him under section 83 commits an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or both.
- (2) A person who in purported compliance with any such requirement furnishes information which he knows to be false or misleading in a material particular, or recklessly furnishes information which is false or misleading in a material particular, commits an offence and is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

86 Restrictions on disclosure of information.

- (1) This section applies to information relating to the business or other affairs of a person which—
 - (a) is supplied by an overseas regulatory authority in connection with a request for assistance, or

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- (b) is obtained by virtue of the powers conferred by section 83, whether or not any requirement to supply it is made under that section.
- (2) Except as permitted by section 87 below, such information shall not be disclosed for any purpose—
 - (a) by the primary recipient, or
 - (b) by any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.
- (3) The “primary recipient” means, as the case may be—
 - (a) the Secretary of State,
 - (b) any person authorised under section 84 to exercise powers on his behalf, and
 - (c) any officer or servant of any such person.
- (4) Information shall not be treated as information to which this section applies if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.
- (5) A person who contravenes this section commits an offence and is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both.

87 Exceptions from restrictions on disclosure.

- (1) Information to which section 86 applies may be disclosed—
 - (a) to any person with a view to the institution of, or otherwise for the purposes of, relevant proceedings,
 - (b) for the purpose of enabling or assisting a relevant authority to discharge any relevant function (including functions in relation to proceedings),
 - (c) to the Treasury, if the disclosure is made in the interests of investors or in the public interest,
 - (d) if the information is or has been available to the public from other sources,
 - (e) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained, or
 - (f) in pursuance of any Community obligation.
- (2) The relevant proceedings referred to in subsection (1)(a) are—
 - (a) any criminal proceedings,
 - ^[F80](b) civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000 and proceedings before the Financial Services and Markets Tribunal;
 - (c) disciplinary proceedings relating to—
 - (i) the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties, or
 - (ii) the discharge by a public servant of his duties.
 - ^[F81](d) proceedings before the Pensions Regulator Tribunal.]

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- (3) In subsection (2)(c)(ii) “public servant” means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that provision by order of the Secretary of State.
- (4) The relevant authorities referred to in subsection (1)(b), and the relevant functions in relation to each such authority, are as follows—

Authority	Functions
[^{F82} The Secretary of State	Functions under— (a)the enactments relating to companies or insolvency; (b)Part 2, this Part or Part 7 of this Act; (c)the Financial Services and Markets Act 2000.]
[^{F83} The Treasury.	Functions under— (a)this Part or Part 7 of this Act; (b)the Financial Services and Markets Act 2000.]
[^{F84} An inspector appointed under Part 14 of the Companies Act 1985.	Functions under that Part.]
[^{F85} A person authorised to exercise powers under section 447 of the Companies Act 1985 or section 84 of this Act.	Functions under that section.]
[^{F85} A person appointed under— (a)section 167 of the Financial Services and Markets Act 2000 (general investigations), (b)section 168 of that Act (investigations in particular cases), (c)section 169(1)(b) of that Act (investigation in support of overseas regulator), (d)section 284 of that Act (investigations into affairs of certain collective investment schemes), or (e)regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),to conduct an investigation.	Functions in relation to the investigation.]
An overseas regulatory authority.	Its regulatory functions (within the meaning of section 82 of this Act).
The Department of Economic Development in Northern Ireland or a person appointed or authorised by that Department.	Functions conferred on it or him by the enactments relating to companies or insolvency.

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F86	F86
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The Bank of England.	[^{F87} Any of its functions]
[^{F88} The Financial Services Authority.	Functions under the enactments relating to friendly societies, under the Building Societies Act 1986 and under the Financial Services and Markets Act 2000.]
[^{F89} A body corporate established in accordance with section 212(1) of that Act.	Functions under the Financial Services Compensation Scheme, established in accordance with section 213 of that Act.
A recognised investment exchange or a recognised clearing house (as defined by section 285 of that Act).	Functions in its capacity as an exchange or clearing house recognised under that Act.
A body designated under section 326(1) of the Financial Services and Markets Act 2000.	Functions in its capacity as a body designated under that section.]
F86	F86
...	...
[^{F90} A body designated by order under section 1252 of the Companies Act 2006.]	[^{F90} Functions under Part 42 of the Companies Act 2006.]
[^{F91} A recognised supervisory or qualifying body within the meaning of Part 42 of the Companies Act 2006.]	[^{F91} Functions as such a body.]
F86	F86
...	...
F92	F92
...	...
The Official Receiver or, in Northern Ireland, the Official Assignee for company liquidations or for bankruptcy.	Functions under the enactments relating to insolvency.
A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986).	Functions in its capacity as such a body under the M12

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	Insolvency Act 1986.
F86	F86
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[^{F93} The Pensions Regulator	Functions conferred by or by virtue of— (a) the Pension Schemes Act 1993, (b) the Pensions Act 1995, (c) the Welfare Reform and Pensions Act 1999, (d) the Pensions Act 2004, or any enactment in force in Northern Ireland corresponding to an enactment mentioned in paragraphs (a) to (d) above.
The Board of the Pension Protection Fund	Functions conferred by or by virtue of Part 2 of the Pensions Act 2004 or any enactment in force in Northern Ireland corresponding to that Part.]
[^{F94} The Office of Fair Trading]	Functions under the [^{F95} Financial Services and Markets Act 2000].
[^{F96} A person authorised by the Secretary of State under sections 245C of the Companies Act 1985.]	[^{F96} Functions relating to the securing of compliance by companies with the accounting requirements of that Act).]
[^{F97} The Director General of the National Lottery.	^{F97} Functions under sections 5 to 10 inclusive and section 15 of the National Lottery etc. Act 1993.]
[^{F98} The Comptroller and Auditor General.	Functions under Part 2 of the National Audit Act 1983.]
[^{F99} The Scottish Ministers	Functions under the enactments relating to insolvency
The Accountant in Bankruptcy	Functions he has under the enactments relating to insolvency.]
[^{F100} The Regulator of Community Interest Companies.	Functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004.]
[^{F101} The Gambling Commission	Functions under the Gambling Act 2005]

[^{F102}Note: Article 3(4) of the Companies (Disclosure of Information) (Designated Authorities) (No. 2) Order 2002 restricts the circumstances in which disclosure for the purpose of enabling or assisting the Comptroller and Auditor General to discharge his relevant functions is permitted.]

- (5) The Secretary of State may by order amend the Table in subsection (4) so as to—
- add any public or other authority to the Table and specify the relevant functions of that authority,
 - remove any authority from the Table, or

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- (c) add functions to, or remove functions from, those which are relevant functions in relation to an authority specified in the Table;
and the order may impose conditions subject to which, or otherwise restrict the circumstances in which, disclosure is permitted.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F80** S. 87(2)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(2)
- F81** S. 87(2)(d) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 102(4), 322, **Sch. 4 para. 20** (with s. 313); S.I. 2005/275, **art. 2(7)**, **Sch. Pt. 7** (subject to **art. 2(12)**)
- F82** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(5)
- F83** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(6)
- F84** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(7)
- F85** S. 87(4): Entries in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(8)
- F86** S. 87(4): Entries in the Table repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(4)
- F87** S. 87(4) Table: words inserted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV** c. II para. 66(3); S.I. 1998/1120, **art. 2**
- F88** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(9)
- F89** S. 87(4): Entries in the Table inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(10)
- F90** S. 87(4) Table: entries substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), **art. 2(2)**, **Sch. 1 para. 158**
- F91** S. 87(4) Table: entries substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), **art. 2(2)**, **Sch. 1 para. 158**
- F92** S. 87(4): Entry in the Table omitted (30.4.2001) by virtue of S.I. 2001/1283, **art. 3(4)**
- F93** S. 87(4) Table: entries substituted (6.4.2005) for entry relating to the Occupational Pensions Regulatory Authority by Pensions Act 2004 (c. 35), ss. 319(1), 322, **Sch. 12 para. 6**; S.I. 2005/275, **art. 2(7)**, **Sch. Pt. 7** (subject to **art. 2(12)**)
- F94** Words in the Table in s. 87(4) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 21(3)**; S.I. 2003/766, **art. 2**, **Sch.** (with transitional and transitory provision in **art. 3**)
- F95** Words in the Table in s. 87(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(11)
- F96** S. 87(4) Table: entry inserted (16.8.1993) by S.I. 1993/1826, **art. 3**
- F97** S. 87(4) Table: entry inserted (10.3.1994) by S.I. 1994/340, **art. 3**
- F98** S. 87(4) Table: Entry inserted (14.8.2002) by S.I. 2002/1889, **art. 3(2)**
- F99** S. 87(4) Table: entries inserted (1.7.1999) by S.I. 1999/1820, **art. 4**, **Sch. 2 Pt. I para. 96**
- F100** S. 87(4) Table: entry inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 29**; S.I. 2004/3322, **art. 2(3)**, **Sch. 3**
- F101** S. 87(4) Table: entry inserted (1.10.2006) by The Companies (Disclosure of Information) (Designated Authorities) Order 2006 (S.I. 2006/1644), **art. 3**
- F102** S. 87(4): Table Note added (14.8.2002) by S.I. 2002/1889, **art. 3(3)**

Modifications etc. (not altering text)

- C7** S. 87 amended (*temp.* from 3.9.2001) by S.I. 2001/2966, **art. 7**
S. 87 disclosure powers extended (14.12.2001) by 2001 c. 24, ss. 17, 127, **Sch. 4 Pt. I para. 28**
- C8** S. 87(1)(b) restricted (14.8.2002) by S.I. 2002/1889, **art. 3(4)**

Commencement Information

- I2** S. 87 wholly in force at 25.4.1991 see s. 215 and S.I. 1990/142 and 1991/878, **art. 2**, **Sch.**

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Marginal Citations

M12 1986 c. 45.

88 Exercise of powers in relation to Northern Ireland.

- (1) The following provisions apply where it appears to the Secretary of State that a request for assistance by an overseas regulatory authority may involve the powers conferred by section 83 being exercised in Northern Ireland in relation to matters which are transferred matters within the meaning of the ^{M13}Northern Ireland Constitution Act 1973.
- (2) The Secretary of State shall before deciding whether to accede to the request consult the Department of Economic Development in Northern Ireland, and if he decides to accede to the request and it appears to him—
 - (a) that the powers should be exercised in Northern Ireland, and
 - (b) that the purposes for which they should be so exercised relate wholly or primarily to transferred matters,he shall by instrument in writing authorise the Department to exercise in Northern Ireland his powers under section 83.
- (3) The following provisions have effect in relation to the exercise of powers by virtue of such an authority with the substitution for references to the Secretary of State of references to the Department of Economic Development in Northern Ireland—
 - (a) section 84 (exercise of powers by officer, &c.),
 - [^{F103}(b) section 449 of the Companies Act 1985 and sections 86 and 87 above (restrictions on disclosure of information);]
 - (c) section 89 (authority for institution of criminal proceedings);and references to the Secretary of State in other enactments which proceed by reference to those provisions shall be construed accordingly as being or including references to the Department.
- (4) The Secretary of State may after consultation with the Department of Economic Development in Northern Ireland revoke an authority given to the Department under this section.
- (5) In that case nothing in the provisions referred to in subsection (3)(b) shall apply so as to prevent the Department from giving the Secretary of State any information obtained by virtue of the authority; and (without prejudice to their application in relation to disclosure by the Department) those provisions shall apply to the disclosure of such information by the Secretary of State as if it had been obtained by him in the first place.
- (6) Nothing in this section affects the exercise by the Secretary of State of any powers in Northern Ireland—
 - (a) in a case where at the time of acceding to the request it did not appear to him that the circumstances were such as to require him to authorise the Department of Economic Development in Northern Ireland to exercise those powers, or
 - (b) after the revocation by him of any such authority;and no objection shall be taken to anything done by or in relation to the Secretary of State or the Department on the ground that it should have been done by or in relation to the other.

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Textual Amendments

F103 S. 88(3)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 78

Marginal Citations

M13 1973 c. 36.

89 Prosecutions.

Proceedings for an offence under section 85 or 86 shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

90 Offences by bodies corporate, partnerships and unincorporated associations.

- (1) Where an offence under section 85 or 86 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.
- (3) Where an offence under section 85 or 86 committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where an offence under section 85 or 86 committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

91 Jurisdiction and procedure in respect of offences.

- (1) Summary proceedings for an offence under section 85 may, without prejudice to any jurisdiction exercisable apart from this section, be taken against a body corporate or unincorporated association at any place at which it has a place of business and against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under section 85 or 86 by an unincorporated association shall be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate.
- (3) Section 33 of the ^{M14}Criminal Justice Act 1925 and Schedule 3 to the ^{M15}Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) apply in a

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case in which an unincorporated association is charged in England and Wales with an offence under section 85 or 86 as they apply in the case of a corporation.

- (4) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under section 85 or 86 by an unincorporated association, [^{F104}section 70 of the ^{M16}Criminal Procedure (Scotland) Act 1995] (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.
- (5) Section 18 of the ^{M17}Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the ^{M18}Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in Northern Ireland with an offence under section 85 or 86 as they apply in the case of a corporation.
- (6) A fine imposed on an unincorporated association on its conviction of such an offence shall be paid out of the funds of the association.

Textual Amendments

F104 Words in s. 91(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 74(3)**

Marginal Citations

M14 1925 c. 86.

M15 1980 c. 43.

M16 1995 c. 46.

M17 1945 c. 15 (N.I.).

M18 S.I. 1981/1675 (N.I.26).

PROSPECTIVE

^{F105} PART IV

REGISTRATION OF COMPANY CHARGES

Textual Amendments

F105 Pt. IV repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1180, 1300(2), **Sch. 16**; S.I. 2008/2860, art. 3(v) (with arts. 7, 8, Sch. 2 para. 1)

^{F105} Introduction

^{F105}92 Introduction.

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F105 Registration in the companies charges register

F10593 Charges requiring registration.

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F10594 The companies charges register.

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F10595 Delivery of particulars for registration.

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F10596 Delivery of further particulars.

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F10597 Effect of omissions and errors in registered particulars.

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F10598 Memorandum of charge ceasing to affect company's property.

.....

F10599 Further provisions with respect to voidness of charges.

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F105100 Additional information to be registered.

.....

F105 Copies of instruments and register to be kept by the company

F105101 Copies of instruments and register to be kept by the company

.....

F105 Supplementary provisions

F105102 Power to make further provision by regulations.

.....

F105103 Other supplementary provisions.

.....

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^{F105}**104 Interpretation, &c.**
.....

^{F105}**105 Charges on property of oversea company.**
.....

^{F105}**106 Application of provisions to unregistered companies.**
.....

^{F105}**107 Consequential amendments.**
.....

PART V

OTHER AMENDMENTS OF COMPANY LAW

A company's capacity and related matters

108 A company's objects and the power of the directors to bind it.

- (1) In Chapter III of Part I of the Companies Act 1985 (a company's capacity; formalities of carrying on business), for section 35 substitute—

“35 A company's capacity not limited by its memorandum.

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.
- (2) A member of a company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for subsection (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

- (4) The operation of this section is restricted by section 30B(1) of the Charities Act 1960 and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

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35A Power of directors to bind the company.

- (1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitation under the company's constitution.
- (2) For this purpose—
 - (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party;
 - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and
 - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—
 - (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
 - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) Nor does that subsection affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) The operation of this section is restricted by section 30B(1) of the Charities Act 1960 and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

35B No duty to enquire as to capacity of company or authority of directors.

A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.”

- (2) In Schedule 21 to the ^{M19}Companies Act 1985 (effect of registration of companies not formed under that Act), in paragraph 6 (general application of provisions of Act), after sub-paragraph (5) insert—
 - “(6) Where by virtue of sub-paragraph (4) or (5) a company does not have power to alter a provision, it does not have power to ratify acts of the directors in contravention of the provision.”

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- (3) In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entries relating to Part I, in the first column for “section 35” substitute “sections 35 to 35B”.

Commencement Information

I3 Ss. 108-112 and Schedule 19 para 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by S.I. 1990/2569.

Marginal Citations

M19 1985 c. 6.

109

- (1) In Part X of the Companies Act 1985 (enforcement of fair dealing by directors), after section 322 insert—

“322A Invalidity of certain transactions involving directors, etc.

- (1) This section applies where a company enters into a transaction to which the parties include—
- (a) a director of the company or of its holding company, or
 - (b) a person connected with such a director or a company with whom such a director is associated,
- and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company’s constitution.
- (2) The transaction is voidable at the instance of the company.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b), and any director of the company who authorised the transaction, is liable—
- (a) to account to the company for any gain which he has made directly or indirectly by the transaction, and
 - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.
- (5) The transaction ceases to be voidable if—
- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
 - (b) the company is indemnified for any loss or damage resulting from the transaction, or
 - (c) rights acquired bona fide for value and without actual notice of the directors’ exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
 - (d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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- (6) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (7) This section does not affect the operation of section 35A in relation to any party to the transaction not within subsection (1)(a) or (b).

But where a transaction is voidable by virtue of this section and valid by virtue of that section in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

- (8) In this section “transaction” includes any act; and the reference in subsection (1) to limitations under the company’s constitution includes limitations deriving—
- (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
 - (b) from any agreement between the members of the company or of any class of shareholders.”.

- (2) In Schedule 22 to the ^{M20}Companies Act 1985 (provisions applying to unregistered companies), in the entries relating to Part X, insert—

“section 322A	Invalidity of certain transactions involving directors, etc.	Subject to section 718(3).”
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Commencement Information

I4 Ss 108-112 and Schedule 19 para 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by S.I. 1990/2569.

Marginal Citations

M20 1985 c. 6.

110 Statement of company’s objects.

In Chapter I of Part I of the ^{M21}Companies Act 1985 (company formation), after section 3 (forms of memorandum) insert—

“3A Statement of company’s objects: general commercial company.

Where the company’s memorandum states that the object of the company is to carry on business as a general commercial company—

- (a) the object of the company is to carry on any trade or business whatsoever, and
- (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.”.

- (2) In the same Chapter, for section 4 (resolution to alter objects) substitute—

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“4 Resolution to alter objects.

- (1) A company may by special resolution alter its memorandum with respect to the statement of the company’s objects.
- (2) If an application is made under the following section, an alteration does not have effect except in so far as it is confirmed by the court.”.

Commencement Information

I5 Ss. 108-112 and Schedule 19 para 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by S.I. 1990/2569.

Marginal Citations

M21 1985 c. 6.

F106 111

Textual Amendments

F106 S. 111 repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), Sch. 7

112 Charitable companies (Scotland).

- (1) In the following provisions (which extend to Scotland only)—
 - (a) “company” means a company formed and registered under the ^{M22}Companies Act 1985, or to which the provisions of that Act apply as they apply to such a company; and
 - (b) “charity” means a body [^{F107}entered in the Scottish Charity Register].
- (2) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—
 - (a) any property acquired by virtue of any transfer, contract or obligation previously effected otherwise than for full consideration in money or money’s worth, or any property representing property so acquired,
 - (b) any property representing income which has accrued before the alteration is made, or
 - (c) the income from any such property as aforesaid.
- (3) Sections 35 and 35A of the Companies Act 1985 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—
 - (a) gives full consideration in money or money’s worth in relation to the act in question, and
 - (b) does not know that the act is not permitted by the company’s memorandum or, as the case may be, is beyond the powers of the directors,

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or who does not know at the time the act is done that the company is a charity.

- (4) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.
- (5) In any proceedings arising out of subsection (3) the burden of proving—
- (a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or
 - (b) that a person knew that the company was a charity,
- lies on the person making that allegation.
- (6) Where a company is a charity and its name does not include the word "charity" or the word "charitable", the fact that the company is a charity shall be stated in English 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,
 - (d) in all conveyances purporting to be executed by the company, and
 - (e) in all its bills of parcels, invoices, receipts and letters of credit.
- (7) In subsection (6)(d) "conveyance" means any document for the creation, transfer, variation or extinction of an interest in land.
- [^{F108}(8) If a company fails to comply with subsection (6) it commits an offence.
- (9) An officer of a company, or a person acting on its behalf, who—
- (a) issues or authorises the issue of any business letter of the company, or any notice or other official publication of the company, in which the statement required by subsection (6) does not appear, or
 - (b) issues or authorises the issue of any bill, invoice, receipt or letter of credit in which the statement required by subsection (6) does not appear,
- commits an offence.
- (10) An officer of a company, or a person acting on its behalf, who signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the statement required by subsection (6) does not appear—
- (a) commits an offence, and
 - (b) is personally liable to the holder of the bill of exchange, promissory note, endorsement, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).
- (11) A person guilty of an offence under subsection (8), (9) or (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

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Textual Amendments

F107 Words in s. 112(1)(b) substituted (1.4.2006) by [The Charities and Trustee Investment \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2006 \(S.I. 2006/242\)](#), arts. 1(3), 5, **Sch. para. 4**

F108 S. 112(8)-(11) substituted for s. 112(8) (1.10.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(3), **Sch. 3 para. 6** (with arts. 6, 11, 12)

Commencement Information

I6 Ss 108-112 and Schedule 19 para. 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by [S.I. 1990/2569](#).

Marginal Citations

M22 [1985 c. 6](#).

De-regulation of private companies

113 Written resolutions of private companies.

F109

Textual Amendments

F109 S. 113 repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; [S.I. 2007/2194](#), **art. 8**, **Sch. 2 Pt. 1** (with **art. 12**, **Sch. 3** (as amended by [S.I. 2007/2607](#), arts. 1, 4 and [S.I. 2007/3495](#), arts. 2(6), 11, **Sch. 5 para. 2(3)-(7)**)) and subject to **Sch. 1**

114 Written resolutions: supplementary provisions.

F110

Textual Amendments

F110 S. 114 repealed (1.10.2007 for s. 114(1) and otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; [S.I. 2007/2194](#), {art. 8}, **Sch. 2 Pt. 1** (with **art. 12**, **Sch. 3** (as amended by [S.I. 2007/2607](#), arts. 1, 4 and [S.I. 2007/3495](#), arts. 2(6), 11, **Sch. 5 para. 2(3)-(7)**)) and subject to **Sch. 1**

115 Election by private company to dispense with certain requirements.

[^{F111}(1) In Part IV of the Companies Act 1985 (allotment of shares and debentures), in section 80(1) (authority of company required for certain allotments) after “this section” insert “or section 80A”; and after that section insert—

“ Election by private company as to duration of authority.

(1) A private company may elect (by elective resolution in accordance with section 379A) that the provisions of this section shall apply, instead of the

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provisions of section 80(4) and (5), in relation to the giving or renewal, after the election, of an authority under that section.

- (2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—
 - (a) for an indefinite period, or
 - (b) for a fixed period, in which case it must state the date on which it will expire.
- (3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.
- (4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.
- (5) A resolution renewing an authority—
 - (a) must state, or re-state, 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
 - (b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.
- (6) The references in this section to the maximum amount of relevant securities that may be allotted shall be construed in accordance with section 80(6).
- (7) If an election under this section ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—
 - (a) if given five years or more before the election ceases to have effect, shall expire forthwith, and
 - (b) otherwise, shall have effect as if it had been given for a fixed period of five years.”.

- (2) In Chapter IV of Part XI of the ^{M23}Companies Act 1985 (meetings and resolutions), after section 366 (annual general meeting) insert—

“ Election by private company to dispense with annual general meetings.

- (1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the holding of annual general meetings.
- (2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.
- (3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.
- (4) If such a notice is given, the provisions of section 366(1) and (4) apply with respect to the calling of the meeting and the consequences of default.

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- (5) If the election ceases to have effect, the company is not obliged under section 366 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under subsection (3).”.

- (3) In the same Chapter, in sections 369(4) and 378(3) (majority required to sanction short notice of meeting) insert—

“A private company may elect (by elective resolution in accordance with section 379A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser percentage, but not less than 90 per cent., as may be specified in the resolution or subsequently determined by the company in general meeting.”.]

Textual Amendments

F111 S. 115 repealed (1.10.2007 for s. 115(2)(3) and otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); [S.I. 2007/2194](#). {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by [S.I. 2007/2607](#), arts. 1, 4 and [S.I. 2007/3495](#), arts. 2(6), 11, [Sch. 5 para. 2\(3\)-\(7\)](#)) and subject to Sch. 1)

Marginal Citations

M23 1985 c. 6.

116 Elective resolution of private company.

- (1) Chapter IV of Part XI of the Companies Act 1985 (meetings and resolutions) is amended as follows.

- (2) After section 379 insert—

“379A Elective resolution of private company.

- (1) An election by a private company for the purposes of—
- (a) section 80A (election as to duration of authority to allot shares),
 - (b) section 252 (election to dispense with laying of accounts and reports before general meeting),
 - (c) section 366A (election to dispense with holding of annual general meeting),
 - (d) section 369(4) or 378(3) (election as to majority required to authorise short notice of meeting), or
 - (e) section 386 (election to dispense with appointment of auditors annually),

shall be made by resolution of the company in general meeting in accordance with this section.

Such a resolution is referred to in this Act as an “elective resolution”.

- (2) An elective resolution is not effective unless—

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- (a) at least 21 days’ notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and
 - (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.
- (3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.
- (4) An elective resolution shall cease to have effect if the company is re-registered as a public company.
- (5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in subsection (1) have effect, notwithstanding any contrary provision in the company’s articles of association.”.
- (3) In section 380 (registration of resolutions), in subsection (4) (resolutions to which the section applies), after paragraph (b) insert—
- “(bb) an elective resolution or a resolution revoking such a resolution;”.

117 Power to make further provision by regulations.

- (1) The Secretary of State may by regulations make provision enabling private companies to elect, by elective resolution in accordance with section 379A of the ^{M24}Companies Act 1985, to dispense with compliance with such requirements of that Act as may be specified in the regulations, being requirements which appear to the Secretary of State to relate primarily to the internal administration and procedure of companies.
- (2) The regulations may add to, amend or repeal provisions of that Act; and may provide for any such provision to have effect, where an election is made, subject to such adaptations and modifications as appear to the Secretary of State to be appropriate.
- (3) The regulations may make different provision for different cases and may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be appropriate.
- (4) Regulations under this section shall be made by statutory instrument.
- (5) No regulations under this section shall be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.

Marginal Citations
M24 1985 c. 6.

Appointment and removal of auditors and related matters

118 Introduction.

F112

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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Textual Amendments

F112 S. 118 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

119 Appointment of auditors.

F113

Textual Amendments

F113 S. 119 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

120 Rights of auditors.

F114

Textual Amendments

F114 S. 120 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

121 Remuneration of auditors.

F115

Textual Amendments

F115 S. 121 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

122 Removal, resignation, &c. of auditors.

F116

Textual Amendments

F116 S. 122 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

123 Statement by person ceasing to hold office as auditor.

[^{F117}(1) The following section is inserted in Chapter V of Part XI of the Companies Act 1985 (auditors)—

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“ Statement by person ceasing to hold office as auditor.

- (1) Where an auditor ceases for any reason to hold office, he shall deposit at the company’s registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.
- (2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
- (3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either—
 - (a) send a copy of it to every person who under section 238 is entitled to be sent copies of the accounts, or
 - (b) apply to the court.
- (4) The company shall if it applies to the court notify the auditor of the application.
- (5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.
- (6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—
 - (a) it shall direct that copies of the statement need not be sent out, and
 - (b) it 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;
 and the company shall within 14 days of the court’s decision send to the persons mentioned in subsection (3)(a) a statement setting out the effect of the order.
- (7) If the court is not so satisfied, the company shall within 14 days of the court’s decision—
 - (a) send copies of the statement to the persons mentioned in subsection (3)(a), and
 - (b) notify the auditor of the court’s decision;
 and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.

Offences of failing to comply with s.394.

- (1) If a person ceasing to hold office as auditor fails to comply with section 394 he is guilty of an offence and liable to a fine.

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- (2) In proceedings for an offence under subsection (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
 - (3) Sections 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under subsection (1).
 - (4) If a company makes default in complying with section 394, 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.”.
- (2) In Schedule 24 to the ^{M25}Companies Act 1985 (punishment of offences), at the appropriate place insert—

“394A(1)	Person ceasing to hold office as auditor failing to deposit statement as to circumstances.	1. On indictment. A fine.		
		2. Summary.	The statutory maximum.	
394A(4)	Company failing to comply with requirements as to statement of person ceasing to hold office as auditor.	1. On indictment. A fine.		
		2. Summary.	The statutory maximum.	One-tenth of the statutory maximum.”.

- (3) In section 733 of the Companies Act 1985 (liability of individuals for corporate default), in subsection (1) (offences in relation to which provisions apply) after “216(3)” insert “, 394A(1)”.
- (4) In section 734 of the Companies Act 1985 (criminal proceedings against unincorporated bodies), in subsection (1) (offences in relation to which the provisions apply), after “under” insert “section 394A(1) or”.
- (5) In Schedule 22 to the Companies Act 1985 (unregistered companies), in the entry for sections 384 to 393, for “393” substitute “394A”.]

Textual Amendments

F117 S. 123 repealed (6.4.2008 for s. 123(1)-(4) and otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), [Sch. 2 Pt. 1](#) (with arts. 7, 12)

Marginal Citations

M25 1985 c. 6.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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F118 **124**

Textual Amendments

F118 S. 124 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, Sch. 1 (with Sch. 3)

Company records and related matters

125 Delivery of documents to the registrar.

- (1) For section 706 of the ^{M26}Companies Act 1985 (size, durability, &c. of documents delivered to the registrar) substitute—

“706 Delivery to the registrar of documents in legible form.

- (1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents in legible form.
- (2) The document must—
- (a) state in a prominent position the registered number of the company to which it relates,
 - (b) satisfy any requirements prescribed by regulations for the purposes of this section, and
 - (c) conform to such requirements as the registrar may specify for the purpose of enabling him to copy the document.
- (3) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (4) Where the registrar serves such a notice, then, unless a replacement document—
- (a) is delivered to him within 14 days after the service of the notice, and
 - (b) complies with the requirements of this section (or section 707) or is not rejected by him for failure to comply with those requirements,
- the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar’s notice.

- (5) Regulations made for the purposes of this section may make different provision with respect to different descriptions of document.”
- (2) For section 707 of the Companies Act 1985 (power of registrar to accept information on microfilm, &c.) substitute—

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“707 Delivery to the registrar of documents otherwise than in legible form.

- (1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents otherwise than in legible form.
- (2) Any requirement to deliver a document to the registrar, or to deliver a document in the prescribed form, is satisfied by the communication to the registrar of the requisite information in any non-legible form prescribed for the purposes of this section by regulations or approved by the registrar.
- (3) Where the document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.
- (4) The document must—
 - (a) contain in a prominent position the registered number of the company to which it relates,
 - (b) satisfy any requirements prescribed by regulations for the purposes of this section, and
 - (c) be furnished in such manner, and conform to such requirements, as the registrar may specify for the purpose of enabling him to read and copy the document.
- (5) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (6) Where the registrar serves such a notice, then, unless a replacement document—
 - (a) is delivered to him within 14 days after the service of the notice, and
 - (b) complies with the requirements of this section (or section 706) or is not rejected by him for failure to comply with those requirements,the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar’s notice.

- (7) The Secretary of State may by regulations make further provision with respect to the application of this section in relation to instantaneous forms of communication.
- (8) Regulations made for the purposes of this section may make different provision with respect to different descriptions of document and different forms of communication, and as respects delivery to the registrar for England and Wales and delivery to the registrar for Scotland.”

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Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Marginal Citations

M26 1985 c. 6.

126 Keeping and inspection of company records.

- (1) In Part XXIV of the ^{M27}Companies Act 1985 (the registrar of companies, his functions and offices), after the sections inserted by section 125 above, insert—

“707A The keeping of company records by the registrar.

- (1) The information contained in a document delivered to the registrar under the Companies Acts may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in legible form.

This is sufficient compliance with any duty of his to keep, file or register the document.

- (2) The originals of documents delivered to the registrar in legible form shall be kept by him for ten years, after which they may be destroyed.

- (3) Where a company has been dissolved, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any records in his custody relating to the company may be removed to the Public Record Office; and records in respect of which such a direction is given shall be disposed of in accordance with the enactments relating to that Office and the rules made under them.

This subsection does not extend to Scotland.

- (4) In subsection (3) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.”.

- (2) For sections 709 and 710 of the ^{M28}Companies Act 1985 (inspection of documents kept by the registrar) substitute—

“709 Inspection, &c. of records kept by the registrar.

- (1) Any person may inspect any records kept by the registrar for the purposes of the Companies Acts and may require—

- (a) a copy, in such form as the registrar considers appropriate, of any information contained in those records, or
- (b) a certified copy of, or extract from, any such record.

- (2) The right of inspection extends to the originals of documents delivered to the registrar in legible form only where the record kept by the registrar of the contents of the document is illegible or unavailable.

- (3) A copy of or extract from a record kept at any of the offices for the registration of companies in England and Wales or Scotland, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of any document delivered to him under the Companies

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Acts, is in all legal proceedings admissible in evidence as of equal validity with the original document and as evidence of any fact stated therein of which direct oral evidence would be admissible.

In England and Wales this is subject to compliance with any applicable rules of court under section 5 of the Civil Evidence Act 1968 or section 69(2) of the Police and Criminal Evidence Act 1984 (which relate to evidence from computer records).

- (4) Copies of or extracts from records furnished by the registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.
- (5) No process for compelling the production of a record kept by the registrar shall issue from any court except with the leave of the court; and any such process shall bear on it a statement that it is issued with the leave of the court.

710 Certificate of incorporation.

Any person may require a certificate of the incorporation of a company, signed by the registrar or authenticated by his official seal.

710A Provision and authentication by registrar of documents in non-legible form.

- (1) Any requirement of the Companies Acts as to the supply by the registrar of a document may, if the registrar thinks fit, be satisfied by the communication by the registrar of the requisite information in any non-legible form prescribed for the purposes of this section by regulations or approved by him.
- (2) Where the document is required to be signed by him or sealed with his official seal, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.”.

Commencement Information

I7 S. 126 wholly in force at 1.7.1991, see s. 215(2) and S.I. 1991/488, **art. 2(1)** (with transitional provisions in **art. 3**)

Marginal Citations

M27 1985 c. 6.

M28 1985 c. 6.

127 Supplementary provisions as to company records and related matters.

- (1) In Part XXIV of the ^{M29}Companies Act 1985 (the registrar of companies, his functions and offices), after section 715 insert—

“715A Interpretation.

- (1) In this Part—
“document” includes information recorded in any form; and

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“legible”, in the context of documents in legible or non-legible form, means capable of being read with the naked eye.

- (2) References in this Part to delivering a document include sending, forwarding, producing or (in the case of a notice) giving it.”
- (2) In section 708(1) of the Companies Act 1985 (fees)—
- (a) in paragraph (a) for the words from “any notice or other document” to the end substitute “any document which under those Acts is required to be delivered to him”, and
 - (b) ^{F119}
- (3) ^{F119}
- (4) In section 713(1) (enforcement of duty to make returns, &c.), for the words from “file with” to “or other document” substitute “deliver a document to the registrar of companies”.
- (5) In section 735A(2) of the ^{M30}Companies Act 1985 (provisions applying to Insolvency Act 1986 ^{M31} and Company Directors Disqualification Act 1986 as to the Companies Acts)—
- (a) after “707(1),” insert “707A(1),”
 - (b) after “708(1)(a) and (4),” insert “709(1) and (3),” and
 - (c) for “710(5)” substitute “710A”.
- (6) After section 735A of the ^{M32}Companies Act 1985 insert—

“735B Relationship of this Act to Parts IV and V of the Financial Services Act 1986.

In sections 704(5), 706(1), 707(1), 707A(1), 708(1)(a) and (4), 709(1) and (3), 710A and 713(1) references to the Companies Acts include Parts IV and V of the Financial Services Act 1986.”

- (7) In Schedule 22 to the Companies Act 1985 (unregistered companies), in the entry for Part XXIV for “sections 706, 708 to 710, 712 and 713” substitute “sections 706 to 710A, 713 and 715A”.

Textual Amendments

F119 S. 127(2)(b)(3) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

Commencement Information

I8 S. 127 wholly in force at 1.7.1991. See s. 215(2) and S.I. 1991/488 art. 2(1).

Marginal Citations

M29 1985 c. 6.

M30 1986 c. 45.

M31 1986 c. 46.

M32 1985 c. 6.

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Miscellaneous

PROSPECTIVE

^{F120} 128 Form and articles for partnership company.

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Textual Amendments

F120 Ss. 126-129 repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, Sch.)

129 Membership of holding company.

- (1) In Chapter I of Part I of the Companies Act 1985 (company formation), for section 23 (membership of holding company) substitute—

“23 Membership of holding company.

- (1) Except as mentioned in this section, 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) The prohibition does not apply where the subsidiary is concerned only as personal representative or trustee unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business which includes the lending of money;
- (b) any such interest as is mentioned in Part I of Schedule 2.
- (3) The prohibition does not apply where the subsidiary is concerned only as a market maker.

For this purpose a person is a market maker if—

- (a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him, and
- (b) he is recognised as so doing by that investment exchange.
- (4) Where a body corporate became a holder of shares in a company—
- (a) before 1st July 1948, or

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- (b) on or after that date and before the commencement of section 129 of the Companies Act 1989, in circumstances in which this section as it then had effect did not apply,

but at any time after the commencement of that section falls within the prohibition in subsection (1) above in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

- (5) Where a body corporate becomes a holder of shares in a company after the commencement of that section in circumstances in which the prohibition in subsection (1) does not apply, but subsequently falls within that prohibition in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

- (6) Where a body corporate is permitted to continue as a member of a company by virtue of subsection (4) or (5), an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company; but for so long as the prohibition in subsection (1) would apply, apart from subsection (4) or (5), it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

- (7) The provisions of this section apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

- (8) In relation to a company other than a company limited by shares, the references in this section to shares shall be construed as references to the interest of its members as such, whatever the form of that interest.”

- (2) In Schedule 2 to the ^{M33}Companies Act 1985 (interpretation of references to “beneficial interest”), in paragraphs 1(1), 3(1) and 4(2) for “as respects section 23(4)” substitute “as this paragraph applies for the purposes of section 23(2)”

Marginal Citations

M33 1985 c. 6.

130 Company contracts and execution of documents by companies.

- (1) In Chapter III of Part I of the Companies Act 1985 (a company’s capacity; the formalities of carrying on business), for section 36 (form of company contracts) substitute—

“36 Company contracts: England and Wales.

Under the law of England and Wales a contract may be made—

- (a) by a company, by writing under its common seal, or
(b) on behalf of a company, by any person acting under its authority, express or implied;

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and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.”.

(2) After that section insert—

“36A Execution of documents: England and Wales.

- (1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by a company.
- (2) A document is executed by a company by the affixing of its common seal.
- (3) A company need not have a common seal, however, and the following subsections apply whether it does or not.
- (4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.
- (5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.
- (6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.”.

(3) F121

(4) After the section inserted by subsection (3) insert—

“36C Pre-incorporation contracts, deeds and obligations.

- (1) A contract which purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.
- (2) Subsection (1) applies—
 - (a) to the making of a deed under the law of England and Wales, and
 - (b) to the undertaking of an obligation under the law of Scotland, as it applies to the making of a contract.”.
- (5) In Schedule 22 of the ^{M34}Companies Act 1985 (provisions applying to unregistered companies), at the appropriate place insert—

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“Section 36	Company contracts.	Subject to section 718(3).
Sections 36A and 36B	Execution of documents.	Subject to section 718(3).
Section 36C	Pre-incorporation contracts, deeds and obligations.	Subject to section 718(3).”.

- (6) The Secretary of State may make provision by regulations applying sections 36 to 36C of the Companies Act 1985 (company contracts; execution of documents; [F122execution of deeds;] pre-incorporation contracts, deeds and obligations) to companies incorporated outside Great Britain, subject to such exceptions, adaptations or modifications as may be specified in the regulations.

Regulations under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (7) Schedule 17 contains further minor and consequential amendments relating to company contracts, the execution of documents by companies and related matters.

Textual Amendments

F121 S. 130(3) repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 27; 68A:2; 76:2\), s. 74\(2\), Sch. 9](#)

F122 Words in s. 130(6) inserted (E.W.) (15.9.2005) by [The Regulatory Reform \(Execution of Deeds and Documents\) Order 2005 \(S.I. 2005/1906\), arts. 1\(1\), 10\(1\), Sch. 1 para. 16](#)

Marginal Citations

M34 1985 c. 6.

131 Members’ rights to damages, &c.

- (1) In Part IV of the Companies Act 1985 (allotment of shares and debentures), before section 112 and after the heading “*Other matters arising out of allotment &c.*”, insert—

“111A Right to damages, &c. not affected.

A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company’s register in respect of shares.”.

- (2) In section 116 of the Companies Act 1985 (extended operation of certain provisions applying to public companies) for “and 110 to 115” substitute “, 110, 111 and 112 to 115”.

132 Financial assistance for purposes of employees’ share scheme.

In Chapter VI of Part V of the Companies Act 1985 (financial assistance by company for purchase of its own shares), in section 153 (transactions not prohibited), for subsection (4)(b) (provision of money in accordance with employees’ share scheme) substitute—

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“(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees’ share scheme.”.

PROSPECTIVE

F123 133 Issue of redeemable shares.

Textual Amendments

F123 Ss. 131-133 repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, Sch.)

134 Disclosure of interests in shares.

F124

Textual Amendments

F124 S. 134 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 1

135 Orders imposing restrictions on shares.

- (1) The Secretary of State may by regulations made by statutory instrument make such amendments of the provisions of the ^{M35}Companies Act 1985 [^{F125}and the Companies Act 2006] relating to orders imposing restrictions on shares as appear to him necessary or expedient—
 - (a) for enabling orders to be made in a form protecting the rights of third parties;
 - (b) with respect to the circumstances in which restrictions may be relaxed or removed;
 - (c) with respect to the making of interim orders by a court.
- (2) The provisions referred to in subsection (1) are ^{F126}. . . , section 445 and Part XV of the Companies Act 1985 [^{F127}and section 794 of the Companies Act 2006].
- (3) The regulations may make different provision for different cases and may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate.
- (4) Regulations under this section shall not be made unless a draft of the regulations has been laid before Parliament and approved by resolution of each House of Parliament.

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Textual Amendments

- F125** Words in s. 135(1) inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 159\(2\)](#)
- F126** Words in s. 135(2) repealed (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), Sch. 1 para. 159(3)(a), [Sch. 2](#)
- F127** Words in s. 135(2) inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 159\(3\)\(b\)](#)

Marginal Citations

- M35** 1985 c. 6.

136 A company’s registered office.

For section 287 of the Companies Act 1985 (registered office) substitute—

“287 Registered office.

- (1) A company shall at all times have a registered office to which all communications and notices may be addressed.
- (2) On incorporation the situation of the company’s registered office is that specified in the statement sent to the registrar under section 10.
- (3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the registrar.
- (4) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.
- (5) For the purposes of any duty of a company—
 - (a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or
 - (b) to mention the address of its registered office in any document,
 a company which has given notice to the registrar of a change in the situation of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.
- (6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (5)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation of its registered office, but—
 - (a) resumes performance of that duty at other premises as soon as practicable, and
 - (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,
 it shall not be treated as having failed to comply with that duty.
- (7) In proceedings for an offence of failing to comply with any such duty as is mentioned in subsection (5), it is for the person charged to show that by reason

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of the matters referred to in that subsection or subsection (6) no offence was committed.”.

137 Effecting of insurance for officers and auditors of company.

F128

Textual Amendments

F128 S. 137 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

138 Increase of limits on certain exemptions.

F129

Textual Amendments

F129 S. 138 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194, {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

139 Annual returns.

- (1) In Part XI of the Companies Act 1985 (company administration and procedure), for Chapter III (annual return) substitute—

“CHAPTER III

ANNUAL RETURN

363 Duty to deliver annual returns.

- (1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company’s “return date”, that is—
- (a) the anniversary of the company’s incorporation, or
 - (b) if the company’s last return delivered in accordance with this Chapter was made up to a different date, the anniversary of that date.
- (2) Each return shall—
- (a) be in the prescribed form,
 - (b) contain the information required by or under the following provisions of this Chapter, and
 - (c) be signed by a director or the secretary of the company;
- and it shall be delivered to the registrar within 28 days after the date to which it is made up.

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- (3) If a company fails to deliver an annual return in accordance with this Chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.

The contravention continues until such time as an annual return made up to that return date and complying with the requirements of subsection (2) (except as to date of delivery) is delivered by the company to the registrar.

- (4) Where a company is guilty of an offence under subsection (3), every director or secretary of the company is similarly liable unless he shows that he took all reasonable steps to avoid the commission or continuation of the offence.
- (5) The references in this section to a return being delivered “in accordance with this Chapter” are—
- (a) in relation to a return made after the commencement of section 139 of the Companies Act 1989, to a return with respect to which all the requirements of subsection (2) are complied with;
 - (b) in relation to a return made before that commencement, to a return with respect to which the formal and substantive requirements of this Chapter as it then had effect were complied with, whether or not the return was delivered in time.

364 Contents of annual return: general.

- (1) Every annual return shall state the date to which it is made up and shall contain the following information—
- (a) the address of the company’s registered office;
 - (b) the type of company it is and its principal business activities;
 - (c) the name and address of the company secretary;
 - (d) the name and address of every director of the company;
 - (e) in the case of each individual director—
 - (i) his nationality, date of birth and business occupation, and
 - (ii) such particulars of other directorships and former names as are required to be contained in the company’s register of directors;
 - (f) in the case of any corporate director, such particulars of other directorships as would be required to be contained in that register in the case of an individual;
 - (g) if the register of members is not kept at the company’s registered office, the address of the place where it is kept;
 - (h) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept at the company’s registered office, the address of the place where it is kept;
 - (i) if the company has elected—
 - (i) to dispense under section 252 with the laying of accounts and reports before the company in general meeting, or
 - (ii) to dispense under section 366A with the holding of annual general meetings,
 a statement to that effect.

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- (2) The information as to the company's type shall be given by reference to the classification scheme prescribed for the purposes of this section.
- (3) The information as to the company's principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.
- (4) A person's "name" and "address" mean, respectively—
 - (a) in the case of an individual, his Christian name (or other forename) and surname and his usual residential address;
 - (b) in the case of a corporation or Scottish firm, its corporate or firm name and its registered or principal office.
- (5) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (6) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the names and addresses of the partners.

364A Contents of annual return: particulars of share capital and shareholders.

- (1) The annual return of a company having a share capital shall contain the following information with respect to its share capital and members.
- (2) The return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.
- (3) The return shall state with respect to each class of shares in the company—
 - (a) the nature of the class, and
 - (b) the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.
- (4) The return shall contain a list of the names and addresses of every person who—
 - (a) is a member of the company on the date to which the return is made up, or
 - (b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company);and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.
- (5) The return shall also state—
 - (a) the number of shares of each class held by each member of the company at the date to which the return is made up, and
 - (b) the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.

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- (6) The return may, if either of the two immediately preceding returns has given the full particulars required by subsections (4) and (5), give only such 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.
- (7) Subsections (4) and (5) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up.

Those particulars shall be included in the company's next annual return after they are received.
- (8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

365 Supplementary provisions: regulations and interpretation.

- (1) The Secretary of State may by regulations make further provision as to the information to be given in a company's annual return, which may amend or repeal the provisions of sections 364 and 364A.
- (2) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) For the purposes of this Chapter, except section 363(2)(c) (signature of annual return), a shadow director shall be deemed to be a director."
- (2) Where a company was, immediately before the commencement of this section, in default with respect to the delivery of one or more annual returns, this section does not affect its obligation to make such a return (in accordance with Chapter III of Part XI of the ^{M36}Companies Act 1985 as it then had effect) or any liability arising from failure to do so.
- (3) In Schedule 24 to the Companies Act 1985 (punishment of offences) in the entry relating to section 363(7), in the first column for "363(7)" substitute "363(3)".
- (4) In Schedule 1 to the ^{M37}Company Directors Disqualification Act 1986 (matters relevant to determining unfitness of directors), in paragraph 4 (failure of company to comply with certain provisions), for sub-paragraphs (f) and (g) substitute—
 "(f) section 363 (duty of company to make annual returns);"
- (5) ^{F130}

Textual Amendments

F130 S. 139(5) repealed (22.7.2004 with effect in accordance with s. 77 of the amending Act) by Finance Act 2004 (c. 12), s. 326, Sch. 42 Pt. 2(7)

Marginal Citations

M36 1985 c. 6.

M37 1986 c. 46.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.
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140 Floating charges (Scotland).

- (1) In section 463 of the Companies Act 1985 (effect of floating charge on winding up), in subsection (1) for the words “On the commencement of the winding up of a company,” there shall be substituted the words “ Where a company goes into liquidation within the meaning of section 247(2) of the Insolvency Act 1986, ”.
- (2) Section 464 of the Companies Act 1985 (ranking of floating charges) is amended as follows.
- (3) In subsection (1)(b) at the beginning there shall be inserted the words “ with the consent of the holder of any subsisting floating charge or fixed security which would be adversely affected, ”.
- (4) After subsection (1) there shall be inserted the following subsection—
 - “(1A) Where an instrument creating a floating charge contains any such provision as is mentioned in subsection (1)(a), that provision shall be effective to confer priority on the floating charge over any fixed security or floating charge created after the date of the instrument.”.
- (5) For subsection (3) there shall be substituted—
 - “(3) The order of ranking of the floating charge with any other subsisting or future floating charges or fixed securities over all or any part of the company’s property is determined in accordance with the provisions of subsections (4) and (5) except where it is determined in accordance with any provision such as is mentioned in paragraph (a) or (b) of subsection (1).”.
- (6) In subsection (5) at the end there shall be added the following paragraph—
 - “; and
 - (e) (in the case of a floating charge to secure a contingent liability other than a liability arising under any further advances made from time to time) the maximum sum to which that contingent liability is capable of amounting whether or not it is contractually limited.”.
- (7) In subsection (6) after the words “subject to” there shall be inserted the words “ Part XII and to ”.
- (8) In section 466 of the Companies Act 1985 (alteration of floating charges), subsections (4) and (5) and in subsection (6) the words “falling under subsection (4) of this section” shall cease to have effect.

Modifications etc. (not altering text)

- C9** S. 140(1) restricted (20.5.1995) by S.I. 1995/1352, [art.4](#)
S. 140(3) restricted (20.5.1995) by S.I. 1995/1352, [art.5](#)
S. 140(6) restricted (20.5.1995) by S.I. 1995/1352, [art.8](#)

Commencement Information

- I9** S. 140 partly in force; s. 140 not in force at Royal Assent see s. 215(1)(2); s. 140(1)-(6) in force at 3.7.1995 by S.I. 1995/1352, [art. 3\(a\)](#)

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F131 141 Application to declare dissolution of company void.

- (1) Section 651 of the ^{M38}Companies Act 1985 (power of court to declare dissolution of company void) is amended as follows.
- (2) In subsection (1) omit the words “at any time within 2 years of the date of the dissolution”.
- (3) After subsection (3) add—
 - “(4) Subject to the following provisions, an application under this section may not be made after the end of the period of two years from the date of the dissolution of the company.
 - (5) An application for the purpose of bringing proceedings against the company—
 - (a) for damages in respect of personal injuries (including any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (funeral expenses)), or
 - (b) for damages under the Fatal Accidents Act 1976 or the Damages (Scotland) Act 1976,
 may be made at any time; but no order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.
 - (6) Nothing in subsection (5) affects the power of the court on making an order under this section to direct that the period between the dissolution of the company and the making of the order shall not count for the purposes of any such enactment.
 - (7) In subsection (5)(a) “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.”.
- (4) An application may be made under section 651(5) of the Companies Act 1985 as inserted by subsection (3) above (proceedings for damages for personal injury, &c.) in relation to a company dissolved before the commencement of this section notwithstanding that the time within which the dissolution might formerly have been declared void under that section had expired before commencement.

But no such application shall be made in relation to a company dissolved more than twenty years before the commencement of this section.
- (5) Except as provided by subsection (4), the amendments made by this section do not apply in relation to a company which was dissolved more than two years before the commencement of this section.

Textual Amendments

F131 Ss. 141-143 repealed (20.1.2007 for the repeal of s. 143(5), 6.4.2007 for the repeal of s. 143(10), 1.10.2007 for the repeal of s. 143(8)(9), 6.4.2008 for the repeal of s. 143(4), 1.10.2008 for the repeal of s. 141(4) for specified purposes, 1.10.2009 in so far as not already in force) by [Companies Act 2006](#) (c. 46), s. 1300(2), [Sch. 16](#); [S.I. 2006/3428](#), art. 7(b)(c), [Sch. 3 Pt. 1](#), [Sch. 4 Pt. 1](#) (with arts. 6, 8(2)); [S.I. 2007/2194](#), art. 8, [Sch. 2 Pt. 1](#) (with arts. 7, 12, [Sch. 3 para. 48](#)); [S.I. 2007/3495](#), art. 8(a), [Sch. 2 Pt. 1](#) (with arts. 7, 12); [S.I. 2008/1886](#), art. 2(f) (with arts. 6, 7); [S.I. 2008/2860](#), art. 4, [Sch. 1 Pt. 1](#) (with arts. 7, 8, [Sch. 2](#)) (which transitional provisions in [Sch. 2](#) are amended (1.10.2009) by [S.I. 2009/2476](#), arts. 1(3), 2(3)(4) and by [S.I. 2009/1802](#), arts. 1, 18, [Sch.](#))

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Marginal Citations

M38 1985 c. 6.

PROSPECTIVE

^{F131}142 Abolition of doctrine of deemed notice.

(1) In Part XXIV of the Companies Act 1985 (the registrar of companies, his functions and offices), after section 711 insert—

“711A Exclusion of deemed notice.

- (1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document kept by the registrar of companies (and thus available for inspection) or made available by the company for inspection.
 - (2) This does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such inquiries as ought reasonably to be made.
 - (3) In this section “document” includes any material which contains information.
 - (4) Nothing in this section affects the operation of—
 - (a) section 416 of this Act (under which a person taking a charge over a company’s property is deemed to have notice of matters disclosed on the companies charges register), or
 - (b) section 198 of the Law of Property Act 1925 as it applies by virtue of section 3(7) of the Land Charges Act 1972 (under which the registration of certain land charges under Part XII, or Chapter III of Part XXIII, of this Act is deemed to constitute actual notice for all purposes connected with the land affected).”.
- (2) In Schedule 22 to the ^{M39}Companies Act 1985 (unregistered companies), in the entry for Part XXIV at the appropriate place insert—

“Section 711A	Abolition of doctrine of deemed notice.	Subject to section 718(3).”.
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Textual Amendments

F131 Ss. 141-143 repealed (20.1.2007 for the repeal of s. 143(5), 6.4.2007 for the repeal of s. 143(10), 1.10.2007 for the repeal of s. 143(8)(9), 6.4.2008 for the repeal of s. 143(4), 1.10.2008 for the repeal of s. 141(4) for specified purposes, 1.10.2009 in so far as not already in force) by [Companies Act 2006 \(c. 46\)](#), s. 1300(2), [Sch. 16](#); S.I. 2006/3428, art. 7(b)(c), [Sch. 3 Pt. 1](#), [Sch. 4 Pt. 1](#) (with arts. 6, 8(2)); S.I. 2007/2194, art. 8, [Sch. 2 Pt. 1](#) (with arts. 7, 12, [Sch. 3 para. 48](#)); S.I. 2007/3495, art. 8(a), [Sch. 2 Pt. 1](#) (with arts. 7, 12); S.I. 2008/1886, art. 2(f) (with arts. 6, 7); S.I. 2008/2860, art. 4, [Sch. 1 Pt. 1](#) (with arts. 7, 8, [Sch. 2](#)) (which transitional provisions in [Sch. 2](#) are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, [Sch.](#))

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Marginal Citations

M39 1985 c. 6.

^{F131}143 Rights of inspection and related matters.

[^{F132}(1) In Part XXV of the Companies Act 1985 (miscellaneous and supplementary provisions), after section 723 insert—

“ Obligations of company as to inspection of registers, &c.

- (1) The Secretary of State may make provision by regulations as to the obligations of a company which is required by any provision of this Act—
 - (a) to make available for inspection any register, index or document, or
 - (b) to provide copies of any such register, index or document, or part of it;
 and a company which fails to comply with the regulations shall be deemed to have refused inspection or, as the case may be, to have failed to provide a copy.
 - (2) The regulations may make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection.
 - (3) The regulations may define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.
 - (4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.
 - (5) Regulations under this section may make different provision for different classes of case.
 - (6) Nothing in any provision of this Act or in the regulations shall be construed as preventing a company from affording more extensive facilities than are required by the regulations or, where a fee may be charged, from charging a lesser fee than that prescribed or no fee at all.
 - (7) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 169(5) of the ^{M40}Companies Act 1985 (contract for purchase by company of its own shares), omit the words from “, during business hours” to “for inspection”.
 - (3) In section 175(6) of the Companies Act 1985 (statutory declaration and auditors’ report relating to payment out of capital), in paragraph (b) omit the words from “during business hours” to “period”.
 - (4) In section 191 of the Companies Act 1985 (register of debenture holders)—
 - (a) in subsection (1), omit the words from “(but” to “for inspection)” and for the words from “a fee of 5 pence” to the end substitute “such fee as may be prescribed”;
 - (b) in subsection (2) for the words from “10 pence” to the end substitute “such fee as may be prescribed”; and

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- (c) in subsection (3), after “on payment” insert “of such fee as may be prescribed” and omit paragraphs (a) and (b).
- (5) In section 219 of the Companies Act 1985 (register of interests in shares, &c.)—
 - (a) in subsection (1), omit the words from “during” to “for inspection”;
 - (b) in subsection (2) for the words from “10 pence” to “required to be copied” substitute “such fee as may be prescribed”.
- (6) In section 288 of the Companies Act 1985 (register of directors and secretaries), in subsection (3), omit the words from “during” to “for inspection” and for the words from “5 pence” to the end substitute “such fee as may be prescribed”.
- (7) In section 318 of the Companies Act 1985 (directors’ service contracts), in subsection (7) omit the words from “, during business hours” to “for inspection”.
- (8) In section 356 of the Companies Act 1985 (register and index of members’ names)—
 - (a) in subsection (1), omit “during business hours” and for “the appropriate charge” substitute “such fee as may be prescribed”;
 - (b) omit subsection (2);
 - (c) in subsection (3) for “the appropriate charge” substitute “such fee as may be prescribed”; and
 - (d) omit subsection (4).
- (9) In section 383 of the Companies Act 1985 (minutes of proceedings of general meetings)—
 - (a) in subsection (1), omit “during business hours”;
 - (b) omit subsection (2); and
 - (c) in subsection (3), after “entitled” insert “on payment of such fee as may be prescribed” and omit the words from “at a charge” to the end.
- (10) In Part IV of Schedule 13 to the ^{M41}Companies Act 1985 (register of directors’ interests)—
 - (a) in paragraph 25, omit the words from “during” to “for inspection” and for the words from “5 pence” to the end substitute “such fee as may be prescribed”; and
 - (b) in paragraph 26(1), for the words from “10 pence” to the end substitute “such fee as may be prescribed”.
- (11) In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entry relating to Part XXV at the appropriate place insert—

“Section 723A	Rights of inspection and related matters.	To apply only so far as this provision has effect in relation to provisions applying by virtue of the foregoing provisions of this Schedule.”.]
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Textual Amendments

F131 Ss. 141-143 repealed (20.1.2007 for the repeal of s. 143(5), 6.4.2007 for the repeal of s. 143(10), 1.10.2007 for the repeal of s. 143(8)(9), 6.4.2008 for the repeal of s. 143(4), 1.10.2008 for the repeal of s. 141(4) for specified purposes, 1.10.2009 in so far as not already in force) by [Companies Act](#)

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2006 (c. 46), s. 1300(2), **Sch. 16**; S.I. 2006/3428, art. 7(b)(c), Sch. 3 Pt. 1, Sch. 4 Pt. 1 (with arts. 6, 8(2)); S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48); S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12); S.I. 2008/1886, art. 2(f) (with arts. 6, 7); S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, Sch.)

F132 S. 143 repealed (20.1.2007 for s. 143(5), 6.4.2007 for s. 143(10), 1.10.2007 for s. 143(8)(9), 6.4.2008 for s. 143(4) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7**, Sch. 3 Pt. 1, Sch. 4 Pt. 1; S.I. 2007/2194, {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1); S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

Commencement Information

I10 S. 143 wholly in force at 1.11.1991 see s. 215 and S.I. 1991/1996, **art. 2(2)(b)**

Marginal Citations

M40 1985 c. 6.

M41 1985 c. 6.

144 “Subsidiary”, “holding company” and “wholly-owned subsidiary”.

(1) In Part XXVI of the Companies Act 1985 (general interpretation provisions), for section 736 substitute—

“736 “Subsidiary”, “holding company” and “wholly-owned subsidiary”.

- (1) A company is a “subsidiary” of another company, its “holding company”, if that other company—
 - (a) holds a majority of the voting rights in it, or
 - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
 - (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,
 or if it is a subsidiary of a company which is itself a subsidiary of that other company.
- (2) A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other’s wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
- (3) In this section “company” includes any body corporate.

736A Provisions supplementing s. 736.

- (1) The provisions of this section explain expressions used in section 736 and otherwise supplement that section.
- (2) In section 736(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.

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- (3) In section 736(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—
- (a) a company shall be treated as having the right to appoint to a directorship if—
 - (i) a person's appointment to it follows necessarily from his appointment as director of the company, or
 - (ii) the directorship is held by the company itself; and
 - (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.
- (4) Rights which are exercisable only in certain circumstances shall be taken into account only—
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
 - (b) when the circumstances are within the control of the person having the rights;
- and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.
- (5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- (6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.
- (7) Rights attached to shares held by way of security shall be treated as held by the person providing the security—
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;
 - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.
- (8) Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in subsection (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.
- (9) For the purposes of subsection (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—
- (a) any subsidiary or holding company of that company, or
 - (b) any subsidiary of a holding company of that company.

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- (10) The voting rights in a company shall be reduced by any rights held by the company itself.
 - (11) References in any provision of subsections (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those subsections but not rights which by virtue of any such provision are to be treated as not held by him.
 - (12) In this section “company” includes any body corporate.”.
- (2) Any reference in any enactment (including any enactment contained in subordinate legislation within the meaning of the Interpretation Act ^{M42}1978) to a “subsidiary” or “holding company” within the meaning of section 736 of the Companies Act ^{M43}1985 shall, subject to any express amendment or saving made by or under this Act, be read as referring to a subsidiary or holding company as defined in section 736 as substituted by subsection (1) above.

This applies whether the reference is specific or general, or express or implied.

- (3) In Part XXVI of the Companies Act 1985 (general interpretation provisions), after section 736A insert—

“736B Power to amend ss. 736 and 736A.

- (1) The Secretary of State may by regulations amend sections 736 and 736A so as to alter the meaning of the expressions “holding company”, “subsidiary” or “wholly-owned subsidiary”.
 - (2) The regulations may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
 - (3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (4) Any amendment made by regulations under this section does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.
 - (5) So much of section 23(3) of the Interpretation Act 1978 as applies section 17(2)(a) of that Act (effect of repeal and re-enactment) to deeds, instruments and documents other than enactments shall not apply in relation to any repeal and re-enactment effected by regulations made under this section.”.
- (4) Schedule 18 contains amendments and savings consequential on the amendments made by this section; and the Secretary of State may by regulations make such further amendments or savings as appear to him to be necessary or expedient.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) So much of section 23(3) of the Interpretation Act 1978 as applies section 17(2)(a) of that Act (presumption as to meaning of references to enactments repealed and re-enacted) to deeds or other instruments or documents does not apply in relation to the repeal and re-enactment by this section of section 736 of the Companies Act 1985.

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Marginal Citations

- M42 1978 c. 30.
- M43 1985 c. 6.

145 The Companies Act 1985 has effect with the further amendments specified in Schedule 19.

Commencement Information

- I11 S. 145 partly in force; s. 145 not in force at Royal Assent see s. 215(1)(2); s. 145 in force at 3.7.1995 (so far as it extends to paragraph 20 of Schedule 19 to this Act) by S.I. 1995/1352, art. 3(b)

PART VI

MERGERS AND RELATED MATTERS

146

F133

Textual Amendments

- F133 S. 146 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

147 **Undertakings as alternative to merger reference.**

F134

Textual Amendments

- F134 S. 147 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

148 **Enforcement of undertakings.**

F135

Textual Amendments

- F135 S. 148 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

149 Temporary restrictions on share dealings.

F136

Textual Amendments

F136 S. 149 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

150 Obtaining control by stages.

F137

Textual Amendments

F137 S. 150 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

151 False or misleading information.

At the end of Part VIII of the ^{M44}Fair Trading Act 1973 there is inserted—

“93B False or misleading information.

- (1) If a person furnishes any information—
 - (a) to the Secretary of State, the Director or the Commission in connection with any of their functions under Parts IV, V, VI or this Part of this Act or under the Competition Act 1980, or
 - (b) to the Commission in connection with the functions of the Commission under the Telecommunications Act 1984 or the Airports Act 1986,
 and either he knows the information to be false or misleading in a material particular, or he furnishes the information recklessly and it is false or misleading in a material particular, he is guilty of an offence.
- (2) A person who—
 - (a) furnishes any information to another which he knows to be false or misleading in a material particular, or
 - (b) recklessly furnishes any information to another which is false or misleading in a material particular,
 knowing that the information is to be used for the purpose of furnishing information as mentioned in subsection (1)(a) or (b) of this section, is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) of this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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(4) Section 129(1) of this Act does not apply to an offence under this section.”.

Marginal Citations

M44 1973 c. 41.

152 Fees. U.K.

F138
.....

Textual Amendments

F138 S. 152 repealed (29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

152 Fees. E+W

- (1) The Secretary of State may by regulations made by statutory instrument require the payment to him or to the Director of such fees as may be prescribed by the regulations in connection with the exercise by the Secretary of State, the Director and the Commission of their functions under Part V of the ^{M122}Fair Trading Act 1973.
- (2) The regulations may provide for fees to be payable—
 - (a) in respect of—
 - (i) an application for the consent of the Secretary of State under section 58(1) of the Fair Trading Act 1973 to the transfer of a newspaper or of newspaper assets, and
 - (ii) a notice under section 75A(1) of that Act, and
 - (b) on the occurrence of any event specified in the regulations.
- (3) The events that may be specified in the regulations by virtue of subsection (2)(b) above include—
 - (a) the making by the Secretary of State of a merger reference to the Commission under section 64 or 75 of the Fair Trading Act 1973,
 - (b) the announcement by the Secretary of State of his decision not to make a merger reference in any case where, at the time the announcement is made, he would under one of those sections have power to make a such a reference.
- (4) The regulations may also contain provision—
 - (a) for ascertaining the persons by whom fees are payable,
 - (b) specifying whether any fee is payable to the Secretary of State or to the Director,
 - (c) for the amount of any fee to be calculated by reference to matters which may include—
 - (i) in a case involving functions of the Secretary of State under sections 57 to 61 of the ^{M123}Fair Trading Act 1973, the number of newspapers concerned, the number of separate editions (determined in accordance with the regulations) of each newspaper and the average circulation

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- per day of publication (within the meaning of Part V of that Act) of each newspaper, and
- (ii) in any other case, the value (determined in accordance with the regulations) of any assets concerned,
- (d) as to the time when any fee is to be paid, and
- (e) for the repayment by the Secretary of State or the Director of the whole or part of any fee in specified circumstances.
- (5) The regulations may make different provision for different cases.
- (6) Subsections (2) to (5) above do not prejudice the generality of subsection (1) above.
- (7) In determining the amount of any fees to be prescribed by the regulations, the Secretary of State may take into account all costs incurred by him and by the Director in respect of the exercise by him, by the Commission and by the Director of their respective functions—
- (a) under Part V of the Fair Trading Act 1973, and
- (b) under Parts I, VII and VIII of that Act in relation to merger references or other matters arising under Part V.
- (8) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Fees paid to the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.
- (10) In this section—
- “the Commission”,
- “the Director”, and
- “merger reference”,
- have the same meaning as in the Fair Trading Act 1973, and “newspaper” has the same meaning as in Part V of that Act.
- (11) References in this section to Part V of the Fair Trading Act 1973 and to merger references under section 64 or 75 of that Act or under that Part [^{F372}include sections 32 to 34 of the Water Industry Act 1991 and any reference under section 32 of that Act].

Extent Information

E3 This version of this provision extends to England and Wales only; a separate version has been created for Scotland and Northern Ireland.

Textual Amendments

F372 Words in s. 152(11) substituted (E.W.) (1. 12. 1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(1), 4(2), [Sch. 1 para. 52](#)

Marginal Citations

M122 1973 c. 41.
M123 1973 c. 41.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.
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152 Fees. **S+N.I.**

- (1) The Secretary of State may by regulations made by statutory instrument require the payment to him or to the Director of such fees as may be prescribed by the regulations in connection with the exercise by the Secretary of State, the Director and the Commission of their functions under Part V of the ^{M124}Fair Trading Act 1973.
- (2) The regulations may provide for fees to be payable—
 - (a) in respect of—
 - (i) an application for the consent of the Secretary of State under section 58(1) of the Fair Trading Act 1973 to the transfer of a newspaper or of newspaper assets, and
 - (ii) a notice under section 75A(1) of that Act, and
 - (b) on the occurrence of any event specified in the regulations.
- (3) The events that may be specified in the regulations by virtue of subsection (2)(b) above include—
 - (a) the making by the Secretary of State of a merger reference to the Commission under section 64 or 75 of the Fair Trading Act 1973,
 - (b) the announcement by the Secretary of State of his decision not to make a merger reference in any case where, at the time the announcement is made, he would under one of those sections have power to make a such a reference.
- (4) The regulations may also contain provision—
 - (a) for ascertaining the persons by whom fees are payable,
 - (b) specifying whether any fee is payable to the Secretary of State or to the Director,
 - (c) for the amount of any fee to be calculated by reference to matters which may include—
 - (i) in a case involving functions of the Secretary of State under sections 57 to 61 of the ^{M125}Fair Trading Act 1973, the number of newspapers concerned, the number of separate editions (determined in accordance with the regulations) of each newspaper and the average circulation per day of publication (within the meaning of Part V of that Act) of each newspaper, and
 - (ii) in any other case, the value (determined in accordance with the regulations) of any assets concerned,
 - (d) as to the time when any fee is to be paid, and
 - (e) for the repayment by the Secretary of State or the Director of the whole or part of any fee in specified circumstances.
- (5) The regulations may make different provision for different cases.
- (6) Subsections (2) to (5) above do not prejudice the generality of subsection (1) above.
- (7) In determining the amount of any fees to be prescribed by the regulations, the Secretary of State may take into account all costs incurred by him and by the Director in respect of the exercise by him, by the Commission and by the Director of their respective functions—
 - (a) under Part V of the Fair Trading Act 1973, and
 - (b) under Parts I, VII and VIII of that Act in relation to merger references or other matters arising under Part V.

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- (8) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Fees paid to the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.
- (10) In this section—
 “the Commission”,
 “the Director”, and
 “merger reference”,
 have the same meaning as in the Fair Trading Act 1973, and “newspaper” has the same meaning as in Part V of that Act.
- (11) References in this section to Part V of the Fair Trading Act 1973 and to merger references under section 64 or 75 of that Act or under that Part include sections 29 and 30 of the ^{M126}Water Act 1989 and any reference under section 29 of that Act.

Extent Information

E4 This version of this provision extends to Scotland and Northern Ireland only; a separate version has been created for England and Wales only.

Marginal Citations

M124 1973 c. 41.

M125 1973 c. 41.

M126 1989 c. 15.

153 Other amendments about mergers and related matters.

Schedule 20 to this Act has effect.

PART VII

FINANCIAL MARKETS AND INSOLVENCY

Modifications etc. (not altering text)

C10 Pt. VII (ss. 154-191): functions of the Secretary of State transferred (7.6.1992) to the Treasury by S.I. 1992/1315, art. 2(1)(c) (with art. 6)

Pt. VII (ss. 154-191) applied (E.W.S.) (15.8.1995) by S.I. 1995/2049, regs.3; and applied (with modifications) (E.W.S.) (15.8.1995) by S.I. 1995/2049, regs.3,4,5,19, 26; and applied (with modifications) (15.7.1996) by S.I. 1996/1469, regs.3, 4, 5

C11 Pt. VII: power to apply conferred (1.12.2001) by 2000 c. 8, s. 301(1)(a); S.I. 2001/3538, art. 2(1)

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Introduction

154 Introduction.

This Part has effect for the purposes of safeguarding the operation of certain financial markets by provisions with respect to—

- (a) the insolvency, winding up or default of a person party to transactions in the market (sections 155 to 172),
- (b) the effectiveness or enforcement of certain charges given to secure obligations in connection with such transactions (sections 173 to 176), and
- (c) rights and remedies in relation to certain property provided as cover for margin in relation to such transactions or subject to such a charge (sections 177 to 181).

Commencement Information

I12 S. 154 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

Recognised investment exchanges and clearing houses

155 Market contracts.

- (1) This Part applies to the following descriptions of contract connected with a recognised investment exchange or recognised clearing house.

The contracts are referred to in this Part as “market contracts”.

- [^{F139}(2) Except as provided in subsection (2A), in relation to a recognised investment exchange this Part applies to—

- (a) contracts entered into by a member or designated non-member of the exchange [^{F140}with a person other than the exchange]] which are either
 - (i) contracts made on the exchange or on an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; or
 - (ii) contracts in the making of which the member or designated non-member was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; and

- [^{F141}(b) contracts entered into by the exchange with its members for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.]

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

- (2A) This Part does not apply to contracts falling within paragraph (a) of subsection (2) above where the exchange in question is a recognised overseas investment exchange.

- [^{F142}(3) In relation to a recognised clearing house, this Part applies to contracts entered into by the clearing house with a member of the clearing house for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.]

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- (4) The Secretary of State may by regulations make further provision as to the contracts to be treated as “market contracts”, for the purposes of this Part, in relation to a recognised investment exchange or recognised clearing house.
- (5) The regulations may add to, amend or repeal the provisions of subsections (2) and (3) above.

Textual Amendments

- F139** S. 155(2)(2A) substituted for s. 155(2) by S.I. 1991/880, **reg. 3**
F140 Words in s. 155(2)(a) inserted (11.8.1998) by S.I. 1998/1748, **reg. 3(a)**
F141 S. 155(2)(b) substituted (11.8.1998) by S.I. 1998/1748, **reg. 3(b)**
F142 S. 155(3) substituted (11.8.1998) by S.I. 1998/1748, **reg.4**

Commencement Information

- I13** S. 155 wholly in force at 25.4.1991. See s. 215 and S.I. 1991/488, **art. 2(2)**; 1991/878, art. 2, Sch.

^{F143}**156**

Textual Amendments

- F143** S. 156 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 75(e)**

157

- (1) A recognised UK investment exchange or recognised UK clearing house shall give the [^{F144}Authority] at least 14 days’ notice of any proposal to amend, revoke or add to its default rules; and the [^{F144}Authority] may within 14 days from receipt of the notice direct the exchange or clearing house not to proceed with the proposal, in whole or in part.
- (2) A direction under this section may be varied or revoked.
- (3) Any amendment or revocation of, or addition to, the default rules of an exchange or clearing house in breach of a direction under this section is ineffective.

Textual Amendments

- F144** Words in s. 157(1) substituted (1.12.2001) by s.I. 2001/3649, arts. 1, 79

Commencement Information

- I14** S. 157 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, **art. 2, Sch.** (subject to savings in **art. 3(1)**)

158 Modifications of the law of insolvency.

- (1) The general law of insolvency has effect in relation to market contracts, and action taken under the rules of a recognised investment exchange or recognised clearing house with respect to such contracts, subject to the provisions of sections 159 to 165.

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- (2) So far as those provisions relate to insolvency proceedings in respect of a person other than a defaulter, they apply in relation to—
- (a) proceedings in respect of a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house, and
 - (b) proceedings in respect of a party to a market contract begun after a recognised investment exchange or recognised clearing house has taken action under its default rules in relation to a person party to the contract as principal,
- but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from market contracts fall to be dealt with in the proceedings.
- (3) The reference in subsection (2)(b) to the beginning of insolvency proceedings is to—
- (a) the presentation of a bankruptcy petition or a petition for sequestration of a person's estate, or
 - [^{F145}(b) the application for an administration order or the presentation of a winding-up petition or the passing of a resolution for voluntary winding up,]
 - (c) the appointment of an administrative receiver.
- [^{F146}(3A) In subsection (3)(b) the reference to an application for an administration order shall be taken to include a reference to—
- (a) in a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors) following filing with the court of a copy of a notice of intention to appoint under that paragraph, the filing of the copy of the notice, and
 - (b) in a case where an administrator is appointed under either of those paragraphs without a copy of a notice of intention to appoint having been filed with the court, the appointment of the administrator.]
- (4) The Secretary of State may make further provision by regulations modifying the law of insolvency in relation to the matters mentioned in subsection (1).
- (5) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

Textual Amendments

- F145** S. 158(3)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 44(a) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F146** S. 158(3A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 44(b) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

- C12** S. 158(4)(5): certain functions made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6)

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Commencement Information

I15 S. 158 wholly in force; s. 158(4)(5) in force for certain purposes at 25.3.1991 and wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, art. 2(2); 1991/878, art. 2, Sch.

159 Proceedings of exchange or clearing house take precedence over insolvency procedures.

- (1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up or sequestration, or in the administration of an insolvent estate—
 - (a) a market contract,
 - (b) the default rules of a recognised investment exchange or recognised clearing house,
 - (c) the rules of a recognised investment exchange or recognised clearing house as to the settlement of market contracts not dealt with under its default rules.
- (2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the ^{M45}Insolvency Act 1986 or the ^{M46}Bankruptcy (Scotland) Act 1985 shall not be exercised in such a way as to prevent or interfere with—
 - (a) the settlement in accordance with the rules of a recognised investment exchange or recognised clearing house of a market contract not dealt with under its default rules, or
 - (b) any action taken under the default rules of such an exchange or clearing house.

This does not prevent a relevant office-holder from afterwards seeking to recover any amount under section 163(4) or 164(4) or prevent the court from afterwards making any such order or decree as is mentioned in section 165(1) or (2) (but subject to subsections (3) and (4) of that section).
- (3) Nothing in the following provisions of this Part shall be construed as affecting the generality of the above provisions.
- (4) A debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or bankruptcy, or in Scotland claimed in a winding up or sequestration, until the completion of the default proceedings.

A debt or other liability which by virtue of this subsection may not be proved or claimed shall not be taken into account for the purposes of any set-off until the completion of the default proceedings.

[^{F147}(4A) However, prior to the completion of default proceedings—

- (a) where it appears to the chairman of the meeting of creditors that a sum will be certified under section 162(1) to be payable, subsection (4) shall not prevent any proof or claim including or consisting of an estimate of that sum which has been lodged or, in Scotland, submitted, from being admitted or, in Scotland, accepted, for the purpose only of determining the entitlement of a creditor to vote at a meeting of creditors; and
- (b) a creditor whose claim or proof has been lodged and admitted or, in Scotland, submitted and accepted, for the purpose of determining the entitlement of a creditor to vote at a meeting of creditors and which has not been subsequently wholly withdrawn, disallowed or rejected, is eligible as a creditor to be a

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member of a liquidation committee or, in bankruptcy proceedings in England and Wales, a creditors' committee.]

- (5) For the purposes of [F148subsections (4) and (4A)] the default proceedings shall be taken to be completed in relation to a person when a report is made under section 162 stating the sum (if any) certified to be due to or from him.

Textual Amendments

F147 S. 159 (4A) inserted by S.I. 1991/880, reg. 4(2)

F148 Words in s. 159(5) substituted by S.I. 1991/880, reg. 4(3)

Commencement Information

I16 S. 159 wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/878, art. 2, Sch.

Marginal Citations

M45 1986 c. 45.

M46 1985 c. 66.

160

- (1) It is the duty of—
- (a) any person who has or had control of any assets of a defaulter, and
 - (b) any person who has or had control of any documents of or relating to a defaulter,
- to give a recognised investment exchange or recognised clearing house such assistance as it may reasonably require for the purposes of its default proceedings.

This applies notwithstanding any duty of that person under the enactments relating to insolvency.

- (2) A person shall not under this section be required to provide any information or produce any document which he would be entitled to refuse to provide or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.
- (3) Where original documents are supplied in pursuance of this section, the exchange or clearing house shall return them forthwith after the completion of the relevant default proceedings, and shall in the meantime allow reasonable access to them to the person by whom they were supplied and to any person who would be entitled to have access to them if they were still in the control of the person by whom they were supplied.
- (4) The expenses of a relevant office-holder in giving assistance under this section are recoverable as part of the expenses incurred by him in the discharge of his duties; and he shall not be required under this section to take any action which involves expenses which cannot be so recovered, unless the exchange or clearing house undertakes to meet them.

There shall be treated as expenses of his such reasonable sums as he may determine in respect of time spent in giving the assistance [F149] and for the purpose of determining the priority in which his expenses are payable out of the assets, sums in respect of time spent shall be treated as his remuneration and other sums shall be treated as his disbursements or, in Scotland, outlays.]

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- (5) The Secretary of State may by regulations make further provision as to the duties of persons to give assistance to a recognised investment exchange or recognised clearing house for the purposes of its default proceedings, and the duties of the exchange or clearing house with respect to information supplied to it.

The regulations may add to, amend or repeal the provisions of subsections (1) to (4) above.

- (6) In this section “document” includes information recorded in any form.

Textual Amendments

F149 Words in s. 160(4) added by S.I. 1991/880, Pt. III reg. 5

Modifications etc. (not altering text)

C13 S. 160(5): (7.6.1992) certain functions made exercisable jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para.7 (with art. 6).

Commencement Information

I17 S. 160 wholly in force at 1.10.1991; s. 160(5) in force for certain purposes at 25.3.1991 see 215(2) and S.I. 1991/488, art. 2(2), s. 160 in force at 25.4.1991 with specified exceptions see S.I. 1991/878, art. 2, Sch. (subject to savings in art. 3(2)), s. 160 wholly in force at 1.10.1991 see S.I. 1991/2173, art. 2

161 Supplementary provisions as to default proceedings.

- (1) If the court is satisfied on an application by a relevant office-holder that a party to a market contract with a defaulter intends to dissipate or apply his assets so as to prevent the office-holder recovering such sums as may become due upon the completion of the default proceedings, the court may grant such interlocutory relief (in Scotland, such interim order) as it thinks fit.
- (2) A liquidator or trustee of a defaulter or, in Scotland, a permanent trustee on the sequestrated estate of the defaulter shall not—
- (a) declare or pay any dividend to the creditors, or
 - (b) return any capital to contributories,
- unless he has retained what he reasonably considers to be an adequate reserve in respect of any claims arising as a result of the default proceedings of the exchange or clearing house concerned.
- (3) The court may on an application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the duties of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.
- (4) Nothing in [F150]section 126, 128, 130, 185 or 285 of, or paragraph 42 or 43 (including paragraph 43(6) as applied by paragraph 44) of Schedule B1 to, the Insolvency Act 1986] (which restrict the taking of certain legal proceedings and other steps), and nothing in any rule of law in Scotland to the like effect as the said section 285, in the Bankruptcy (Scotland) Act M471985 or in the Debtors (Scotland) Act M48 as to the effect of sequestration, shall affect any action taken by an exchange or clearing house for the purpose of its default proceedings.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.
Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F150 Words in s. 161(4) substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248, 279, Sch. 17 para. 45 (with savings in s. 249(1)-(3)); [S.I. 2003/2093](#), [art. 2\(1\)](#), Sch. 1 (subject to transitional provisions in [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), [art. 2](#)))

Modifications etc. (not altering text)

C14 S. 161 amended by [S.I. 1991/880](#), [reg. 19\(1\)](#)

Commencement Information

I18 S. 161 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2](#), [Sch.](#)

Marginal Citations

M47 [1985 c. 66](#).

M48 [1987 c. 18](#).

162 Duty to report on completion of default proceedings.

(1) ^{F151}Subject to subsection (1A), a recognised investment exchange or recognised clearing house shall, on the completion of proceedings under its default rules, report to the [^{F152}Authority] on its proceedings stating in respect of each creditor or debtor the sum certified by them to be payable from or to the defaulter or, as the case may be, the fact that no sum is payable.

^{F153}(1A) A recognised overseas investment exchange or recognised overseas clearing house shall not be subject to the obligation under subsection (1) unless it has been notified by the [^{F154}Authority] that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.

(2) The exchange or clearing house may make a single report or may make reports from time to time as proceedings are completed with respect to the transactions affecting particular persons.

(3) The exchange or clearing house shall apply a copy of every report under this section to the defaulter and to any relevant office-holder acting in relation to him or to his estate.

(4) When a report under this section is received by the [^{F155}Authority, it] shall publish notice of that fact in such manner as [^{F156}it] thinks appropriate for bringing [^{F157}the report] to the attention of creditors and debtors of the defaulter.

(5) An exchange or clearing house shall make available for inspection by a creditor or debtor of the defaulter so much of any report by it under this section as relates to the sum (if any) certified to be due or from him or to the method by which that sum was determined.

(6) Any such person may require the exchange or clearing house, on payment of such reasonable fee as the exchange or clearing house may determine, to provide him with a copy of any part of a report which he is entitled to inspect.

Textual Amendments

F151 Words in s. 162(1) inserted by [S.I. 1991/880](#), [reg. 6\(2\)](#)

F152 Word in [s. 162\(1\)](#) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), [80\(2\)](#)

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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- F153** S. 162(1A) inserted by S.I. 1991/880, **reg. 6(3)**
F154 Word in s. 162(1A) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(3)**
F155 Words in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(a)**
F156 Word in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(b)**
F157 Words in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(c)**

Modifications etc. (not altering text)

- C15** S. 162 applied (with modifications) (E.W.S.) (11.12.1999) by S.I. 1999/2979, **reg. 15(1)**

Commencement Information

- I19** S. 162 wholly in force at 1.10.1991; s. 162 in force for certain purposes at 25.4.1991 see s. 215 and S.I. 1991/878, **art. 2, Sch.** and wholly in force at 1.10.1991 see s. 215 and S.I. 1991/2173, **art. 2**

163 Net sum payable on completion of default proceedings.

- (1) The following provisions apply with respect to the net sum certified by a recognised investment exchange or recognised clearing house, upon proceedings under its default rules being duly completed in accordance with this Part, to be payable by or to a defaulter.
- (2) If, in England and Wales, a bankruptcy or winding-up order has been made, or a resolution for voluntary winding-up has been passed, the debt—
 - (a) is provable in the bankruptcy or winding up or, as the case may be, is payable to the relevant office-holder, and
 - (b) shall be taken into account, where appropriate, under section 323 of the Insolvency Act ^{M49}1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up,

in the same way as a debt before the commencement of the bankruptcy, the date on which the body corporate goes into liquidation (within the meaning of section 247 of the Insolvency Act 1986) or, in the case of a partnership, the date of the winding-up order.
- (3) If, in Scotland, an award of sequestration or a winding-up order has been made, or a resolution for voluntary winding up has been passed, the debt—
 - (a) may be claimed in the sequestration or winding up or, as the case may be, is payable to the relevant office-holder, and
 - (b) shall be taken into account for the purposes of any rule of law relating to set-off applicable in sequestration or winding up,

in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the Bankruptcy (Scotland) Act ^{M50}1985) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986).
- (4) However, where (or to the extent that) a sum is taken into account by virtue of subsection (2)(b) or (3)(b) which arises from a contract entered into at a time when the creditor had notice—
 - (a) that a bankruptcy petition or, in Scotland, a petition for sequestration was pending, or
 - (b) that a meeting of creditors had been summoned under section 98 of the Insolvency Act ^{M51}1986 or that a winding-up petition was pending,

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the value of any profit to him arising from the sum being so taken into account (or being so taken into account to that extent) is recoverable from him by the relevant office-holder unless the court directs otherwise.

- (5) Subsection (4) does not apply in relation to a sum arising from a contract effected under the default rules of a recognised investment exchange or recognised clearing house.
- (6) Any sum recoverable by virtue of subsection (4) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

Modifications etc. (not altering text)

- C16** S. 163 amended by [S.I. 1991/880, reg. 19\(1\)](#)
S. 163 applied (with modifications) (11.12.1999) by [S.I. 1999/2979, reg. 15\(1\)](#)
- C17** S. 163(4)-(6) excluded in part (11.12.1999) by [S.I. 1999/2979, reg. 21\(2\)\(a\)](#)

Commencement Information

- I20** S. 163 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

- M49** [1986 c. 45.](#)
M50 [1985 c. 66.](#)
M51 [1986 c. 45.](#)

164 Disclaimer of property, rescission of contracts, &c.

- (1) Sections 178, 186, 315 and 345 of the Insolvency Act 1986 (power to disclaim onerous property and court's power to order rescission of contracts, &c.) do not apply in relation to—
 - (a) a market contract, or
 - (b) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to market contracts.

In the application of this subsection in Scotland, the reference to sections 178, 315 and 345 shall be construed as a reference to any rule of law having the like effect as those sections.
- (2) In Scotland, a permanent trustee on the sequestrated estate of a defaulter or a liquidator is bound by any market contract to which that defaulter is a party and by any contract as is mentioned in subsection (1)(b) above notwithstanding section 42 of the ^{M52}Bankruptcy (Scotland) Act 1985 or any rule of law to the like effect applying in liquidations.
- (3) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), and section 32(8) of the Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to—
 - (a) a market contract, or any disposition of property in pursuance of such a contract,
 - (b) the provision of margin in relation to market contracts,

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- (c) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to a market contract, or any disposition of property in pursuance of such a contract, or
 - (d) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.
- (4) However, where—
- (a) a market contract is entered into by a person who has notice that a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the other party to the contract, or
 - (b) margin in relation to a market contract is accepted by a person who has notice that such a petition has been presented in relation to the person by whom or on whose behalf the margin is provided,
- the value of any profit to him arising from the contract or, as the case may be, the amount or value of the margin is recoverable from him by the relevant office-holder unless the court directs otherwise.
- (5) Subsection (4)(a) does not apply where the person entering into the contract is a recognised investment exchange or recognised clearing house acting in accordance with its rules, or where the contract is effected under the default rules of such an exchange or clearing house; but subsection (4)(b) applies in relation to the provision of margin in relation to such a contract.
- (6) Any sum recoverable by virtue of subsection (4) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

Modifications etc. (not altering text)

C18 S. 164 amended by S.I. 1991/880, reg. 19(1)

C19 S. 164(4)-(6) excluded in part (11.12.1999) by S.I. 1999/2979, reg. 21(2)(b)

Commencement Information

I21 S. 164 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

Marginal Citations

M52 1985 c. 66.

165 Adjustment of prior transactions.

- (1) No order shall be made in relation to a transaction to which this section applies under—
 - (a) section 238 or 339 of the Insolvency Act 1986 (transactions at an under-value),
 - (b) section 239 or 340 of that Act (preferences), or
 - (c) section 423 of that Act (transactions defrauding creditors).
- (2) As respects Scotland, no decree shall be granted in relation to any such transaction—
 - (a) under section 34 or 36 of the ^{M53}Bankruptcy (Scotland) Act 1985 or section 242 or 243 of the Insolvency Act 1986 (gratuitous alienations and unfair preferences), or
 - (b) at common law on grounds of gratuitous alienations or fraudulent preferences.

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- (3) This section applies to—
- (a) a market contract to which a recognised investment exchange or recognised clearing house is a party or which is entered into under its default rules, and
 - (b) a disposition of property in pursuance of such a market contract.
- (4) Where margin is provided in relation to a market contract and (by virtue of subsection (3)(a) or otherwise) no such order or decree as is mentioned in subsection (1) or (2) has been, or could be, made in relation to that contract, this section applies to—
- (a) the provision of the margin,
 - (b) any contract effected by the exchange or clearing house in question for the purpose of realising the property provided as margin, and
 - (c) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.

Commencement Information

I22 S. 165 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

Marginal Citations

M53 1985 c. 66.

166 Powers of Secretary of State to give directions.

- (1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or recognised UK clearing house.
- (2) Where in any case an exchange or clearing house has not taken action under its default rules—
- (a) if it appears to the [^{F158}Authority] that it could take action, [^{F159}the Authority] may direct it to do so, and
 - (b) if it appears to the [^{F158}Authority] that it is proposing to take or may take action, [^{F159}the Authority] may direct it not to do so.
- (3) Before giving such a direction the [^{F160}Authority] shall consult the exchange or clearing house in question; and [^{F161}it] shall not give a direction unless [^{F161}it] is satisfied, in the light of that consultation—
- (a) in the case of a direction to take action, that failure to take action would involve undue risk to investors or other participants in the market, or
 - (b) in the case of a direction not to take action, that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market.
- (4) A direction shall specify the grounds on which it is given.
- (5) A direction not to take action may be expressed to have effect until the giving of a further direction (which may be a direction to take action or simply revoking the earlier direction).
- (6) No direction shall be given not to take action if, in relation to the person in question—

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- (a) a bankruptcy order or an award of sequestration of his estate has been made, or an interim receiver or interim trustee has been appointed, or
- (b) a winding up order has been made, a resolution for voluntary winding up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;

and any previous direction not to take action shall cease to have effect on the making or passing of any such order, award or appointment.

- (7) Where an exchange or clearing house has taken or been directed to take action under its default rules, the [^{F162}Authority] may direct it to do or not to do such things (being things which it has power to do under its default rules) as are specified in the direction.

The [^{F162}Authority] shall not give such a direction unless [^{F163}it is satisfied that the direction] will not impede or frustrate the proper and efficient conduct of the default proceedings.

- (8) A direction under this section is enforceable, on the application of the [^{F164}Authority], by injunction or, in Scotland, by an order under section 45 of the ^{M54}Court of Session Act 1988; and where an exchange or clearing house has not complied with a direction, the court may make such order as it thinks fit for restoring the position to what it would have been if the direction had been complied with.

Textual Amendments

F158 Words in s. 166(2)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(2)(a)

F159 Words in s. 166(2)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(2)(b)

F160 Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(3)(a)

F161 Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(3)(b)

F162 Words in s. 166(7) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(4)(a)

F163 Words in s. 166(7) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(4)(b)

F164 Words in s. 166(8) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(5)

Commencement Information

I23 S. 166 wholly in force at 1.10.1991; s. 166 in force for certain purposes at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to savings in art. 3(2)) and wholly in force at 1.10.1991 see S.I. 1991/2173, art. 2.

Marginal Citations

M54 1988 c. 36.

167 Application to determine whether default proceedings to be taken.

- (1) Where there has been made or passed in relation to a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house—

- (a) a bankruptcy order or an award of sequestration of his estate, or an order appointing an interim receiver of his property, or
- (b) an administration or winding up order, a resolution for voluntary winding up or an order appointing a provisional liquidator,

and the exchange or clearing house has not taken action under its default rules in consequence of the order, award or resolution or the matters giving rise to it, a relevant

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office-holder appointed by, or in consequence of or in connection with, the order, award or resolution may apply to the [F165 Authority].

[F166(1A) In subsection (1) a reference to an administration order shall be taken to include a reference to the appointment of an administrator under—

- (a) paragraph 14 of Schedule B1 to the Insolvency Act 1986 (c.45) (appointment by holder of qualifying floating charge), or
- (b) paragraph 22 of that Schedule (appointment by company or directors).]

(2) The application shall specify the exchange or clearing house concerned and the grounds on which it is made.

(3) On receipt of the application the [F167 Authority] shall notify the exchange or clearing house, and unless within three business days after the day on which the notice is received the exchange or clearing house—

- (a) takes action under its default rules, or
- (b) notifies the [F167 Authority] that it proposes to do so forthwith,

then, subject as follows, the provisions of sections 158 to 165 above do not apply in relation to market contracts to which the member or designated non-member in question is a party or to anything done by the exchange or clearing house for the purposes of, or in connection with, the settlement of any such contract.

For this purpose a “business day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom under the M55 Banking and Financial Dealings Act 1971.

(4) The provisions of sections 158 to 165 are not disapplied if before the end of the period mentioned in subsection (3) the [F168 Authority] gives the exchange or clearing house a direction under section 166(2)(a) (direction to take action under default rules).

No such direction may be given after the end of that period.

(5) If the exchange or clearing house notifies the [F169 Authority] that it proposes to take action under its default rules forthwith, it shall do so; and that duty is enforceable, on the application of the [F169 Authority], by injunction or, in Scotland, by an order under section 45 of the M56 Court of Session Act 1988.

Textual Amendments

F165 Words in s. 167(1) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 82(2)

F166 S. 167(1A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 46 (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F167 Words in s. 167(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 82(3)

F168 Words in s. 167(4) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 82(4)

F169 Words in s. 167(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 82(5)

Commencement Information

I24 S. 167 wholly in force at 1.10.1991; s. 167 in force for certain purposes at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. and wholly in force at 1.10.1991 see S.I. 1991/2173, art. 2

Marginal Citations

M55 1971 c. 80.

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M56 1988 c. 36.

^{F170}**168**

Textual Amendments
F170 S. 168 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(f)

169 Supplementary provisions.

^{F171}(1)

- (2) [^{F172}Sections 296 and 297 of the Financial Services and Markets Act 2000 apply] in relation to a failure by a recognised investment exchange or recognised clearing house to comply with an obligation under this Part as to a failure to comply with an obligation under that Act.
- (3) Where the recognition of an investment exchange or clearing house is revoked under the [^{F173}Financial Services and Markets Act 2000, the appropriate authority] may, before or after the revocation order, give such directions as [^{F174}it] thinks fit with respect to the continued application of the provisions of this Part, with such exceptions, additions and adaptations as may be specified in the direction, in relation to cases where a relevant event of any description specified in the directions occurred before the revocation order takes effect.

[^{F175}(3A) “The appropriate authority” means—

- (a) in the case of an overseas investment exchange or clearing house, the Treasury; and
- (b) in the case of a UK investment exchange or clearing house, the Authority.]

^{F171}(4)

- (5) [^{F176}Regulations under section 414 of the Financial Services and Markets Act 2000 (service of notices) may make provision] in relation to a notice, direction or other document required or authorised by or under this Part to be given to or served on any person other than the [^{F177}Treasury or the Authority].

Textual Amendments
F171 S. 169(1)(4) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(g)
F172 Words in s. 169(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(2)
F173 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(a)
F174 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(b)
F175 S. 169(3A) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(4)
F176 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(a)
F177 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(b)

Modifications etc. (not altering text)

C20 S. 169(3) applied (with modifications) (E.W.S.) (15.8.1995) by S.I. 1995/2049, reg. 28

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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Commencement Information

I25 S. 169 partly in force: s. 169(1)(2)(3)(5) in force 25.4.1991 see s. 215(2) and [S.I. 1991/878, art. 2, Sch.](#)

Other exchanges and clearing houses

170 Certain overseas exchanges and clearing houses.

- (1) The Secretary of State [^{F178}and the Treasury] may by regulations provide that this Part applies in relation to contracts connected with an overseas investment exchange or clearing house which is approved by [^{F179}the Treasury] in accordance with such procedures as may be specified in the regulations, as satisfying such requirements as may be so specified, as it applies in relation to contracts connected with a recognised investment exchange or clearing house.
- (2) The [^{F180}Treasury] shall not approve an overseas investment exchange or clearing house unless [^{F181}they are] satisfied—
 - (a) that the rules and practices of the body, together with the law of the country in which the body's head office is situated, provide adequate procedures for dealing with the default of persons party to contracts connected with the body, and
 - (b) that it is otherwise appropriate to approve the body.
- (3) The reference in subsection (2)(a) to default is to a person being unable to meet his obligations.
- (4) The regulations may apply in relation to the approval of a body under this section such of the provisions of the [^{F182}Financial Services and Markets Act 2000] as the Secretary of State considers appropriate.
- (5) The Secretary of State may make regulations which, in relation to a body which is so approved—
 - (a) apply such of the provisions of the [^{F182}Financial Services and Markets Act 2000] as the Secretary of State considers appropriate, and
 - (b) provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient;and different provision may be made with respect to different bodies or descriptions of body.
- (6) Where the regulations apply any provisions of the [^{F182}Financial Services and Markets Act 2000], they may provide that those provisions apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.

Textual Amendments

F178 Words in s. 170(1) inserted (1.12.2001) by [S.I. 2001/3649, arts. 1, 84\(2\)\(a\)](#)

F179 Words in s. 170(1) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 84\(2\)\(b\)](#)

F180 Word in s. 170(2) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 84\(3\)\(a\)](#)

F181 Words in s. 170(2) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 84\(3\)\(b\)](#)

F182 Words in s. 170(4)(5)(a)(6) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 84\(4\)](#)

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Modifications etc. (not altering text)

C21 Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, **Sch. 2 para. 7** (with art. 6).

Commencement Information

I26 S. 170 partly in force; s. 170 not in force at Royal Assent see s. 215(1)(2); s. 170 in force for certain purposes at 25.3.1991 by S.I. 1991/488, **art. 2(2)**.

^{F183}**171**

Textual Amendments

F183 S. 171 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 75(h)**

172 Settlement arrangements provided by the Bank of England.

- (1) The Secretary of State may by regulations provide that this Part applies to contracts of any specified description in relation to which settlement arrangements are provided by the Bank of England, as it applies to contracts connected with a recognised investment exchange or recognised clearing house.
- (2) Regulations under this section may provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.
- (3) Before making any regulations under this section, the Secretary of State [^{F184}and the Treasury shall consult] the Bank of England.

Textual Amendments

F184 Words in s. 172(3) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 13(b)** (with art. 6).

Modifications etc. (not altering text)

C22 Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, **Sch. 2 para. 7** (with art. 6).

Commencement Information

I27 S. 172 partly in force; s. 172 not in force at Royal Assent see s. 215(1)(2); s. 172 in force for certain purposes at 25.3.1991 by S.I. 1991/488, **art. 2(2)**.

Market charges

173 Market charges.

- (1) In this Part “market charge” means a charge, whether fixed or floating, granted—

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- (a) in favour of a recognised investment exchange, for the purpose of securing debts or liabilities arising in connection with the settlement of market contracts,
 - ^{F185}(aa) in favour of The Stock Exchange, for the purpose of securing debts or liabilities arising in connection with short term certificates;]
 - (b) in favour of a recognised clearing house, for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts, or
 - (c) in favour of a person who agrees to make payments as a result of the transfer ^{F186}or allotment] of specified securities made through the medium of a computer-based system established by the Bank of England and The Stock Exchange, for the purpose of securing debts or liabilities of the transferee ^{F186}or allottee] arising in connection therewith.
- (2) Where a charge is granted partly for purposes specified in subsection (1)(a), ^{F187}(aa),] (b) or (c) and partly for other purposes, it is a “market charge” so far as it has effect for the specified purposes.
- (3) ^{F188}In subsection (1)—
 - “short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of them and also undertaking to make appropriate payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part;]
 - “specified securities” means securities for the time being specified in the list in Schedule 1 to the ^{M57}Stock Transfer Act 1982, and includes any right to such securities; and
 - “transfer”, in relation to any such securities or right, means a transfer of the beneficial interest.
- (4) The Secretary of State may by regulations make further provision as to the charges granted in favour of any such person as is mentioned in subsection (1)(a), (b) or (c) which are to be treated as “market charges” for the purposes of this Part; and the regulations may add to, amend or repeal the provisions of subsections (1) to (3) above.
- (5) The regulations may provide that a charge shall or shall not be treated as a market charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.
- (6) Before making regulations under this section in relation to charges granted in favour of a person within subsection (1)(c), the Secretary of State ^{F189}and the Treasury shall consult] the Bank of England.

Textual Amendments

F185 S. 173(1)(aa) inserted by S.I. 1991/880, reg. 9(a)

F186 Words in s. 173(1)(c) inserted by S.I. 1991/880, reg. 9(b)

F187 Word in s. 173(2) inserted by S.I. 1991/880, reg. 9(c)

F188 Words in s. 173(3) substituted by S.I. 1991/880, reg. 9(d)

F189 Words in s. 173(6) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), Sch. 4 para. 13

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Modifications etc. (not altering text)

C23 Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, **Sch. 2 para.7** (with art. 6).

Commencement Information

I28 S. 173 wholly in force; s. 173(4)(5) in force for certain purposes at 25.3.1991 and s. 173 wholly in force at 25.4.1991 see s. 215(2); S.I. 1991/488, **art. 2(2)**; S.I. 1991/878, **art. 2, Sch.**

Marginal Citations

M57 1982 c. 41.

174 Modifications of the law of insolvency.

- (1) The general law of insolvency has effect in relation to market charges and action taken in enforcing them subject to the provisions of section 175.
- (2) The Secretary of State may by regulations make further provision modifying the law of insolvency in relation to the matters mentioned in subsection (1).
- (3) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect with such exceptions, additions or adaptations as are specified in the regulations.
- (4) The regulations may make different provision for cases defined by reference to the nature of the charge, the nature of the property subject to it, the circumstances, nature or extent of the obligations secured by it or any other relevant factor.
- (5) Before making regulations under this section in relation to charges granted in favour of a person within section 173(1)(c), the Secretary of State [^{F190}and the Treasury shall consult] the Bank of England.

Textual Amendments

F190 Words in s. 174(5) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 13(d)** (with art. 6).

Modifications etc. (not altering text)

C24 Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, **Sch. 2 para.7** (with art. 6).

Commencement Information

I29 S. 174 wholly in force; s. 174 not in force at Royal Assent see s. 215(2); s. 174(2)(4) in force for certain purposes at 25.3.1991 by S.I. 1991/488, **art. 2(2)**; s. 174 wholly in force at 25.4.1991 by S.I. 1991/878, **art. 2, Sch.** (subject to certain savings for s. 174(1) in art. 3(4)).

175 Administration orders, &c.

- [^{F191}(1) The following provisions of Schedule B1 to the Insolvency Act 1986 (administration) do not apply in relation to a market charge—

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- (a) paragraph 43(2) and (3) (restriction on enforcement of security or repossession of goods) (including that provision as applied by paragraph 44 (interim moratorium)), and
 - (b) paragraphs 70, 71 and 72 (power of administrator to deal with charged or hire-purchase property).
- (1A) Paragraph 41(2) of that Schedule (receiver to vacate office at request of administrator) does not apply to a receiver appointed under a market charge.]
- (2) However, where a market charge falls to be enforced after [^{F192}the occurrence of an event to which subsection (2A) applies], and there exists another charge over some or all of the same property ranking in priority to or *pari passu* with the market charge, [^{F193}on the application of any person interested] the court may order that there shall be taken after enforcement of the market charge such steps as the court may direct for the purpose of ensuring that the chargee under the other charge is not prejudiced by the enforcement of the market charge.
- [^{F194}(2A) This subsection applies to—
 - (a) making an administration application under paragraph 12 of Schedule B1 to the Insolvency Act 1986,
 - (b) appointing an administrator under paragraph 14 or 22 of that Schedule (appointment by floating charge holder, company or directors),
 - (c) filing with the court a copy of notice of intention to appoint an administrator under either of those paragraphs.]
- (3) The following provisions of the Insolvency Act 1986 (which relate to the powers of receivers) do not apply in relation to a market charge—
 - (a) section 43 (power of administrative receiver to dispose of charged property), and
 - (b) section 61 (power of receiver in Scotland to dispose of an interest in property).
- (4) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), and section 32(8) of the ^{M58}Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to a disposition of property as a result of which the property becomes subject to a market charge or any transaction pursuant to which that disposition is made.
- (5) However, if a person (other than the chargee under the market charge) who is party to a disposition mentioned in subsection (4) has notice at the time of the disposition that a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the party making the disposition, the value of any profit to him arising from the disposition is recoverable from him by the relevant office-holder unless the court directs otherwise.
- (6) Any sum recoverable by virtue of subsection (5) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.
- (7) In a case falling within both subsection (4) above (as a disposition of property as a result of which the property becomes subject to a market charge) and section 164(3) (as the provision of margin in relation to a market contract), section 164(4) applies with respect to the recovery of the amount or value of the margin and subsection (5) above does not apply.

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Textual Amendments

- F191** S. 175(1)(1A) substituted (15.9.2003) for s. 175(1) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(2) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F192** Words in s. 175(2) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(3) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F193** Words in s. 175(2) inserted by S.I. 1991/880, reg. 18
- F194** S. 175(2A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(4) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

- C25** S. 175(2) restricted (25.2.1991) by S.I. 1991/145, art. 3
S. 175(2) amended by S.I. 1991/880, reg. 19(2)
- C26** S. 175(1)(b)(3) amended by S.I. 1991/880, reg. 15
S. 175(1)(b)(3) modified (15.8.1995) by S.I. 1995/2049, reg. 24
S. 175(1)(b)(3) modified (15.7.1996) by S.I. 1996/1469, reg. 8(2)
- C27** S. 175(5) amended by S.I. 1991/880, reg. 19(1)
- C28** S. 175(5)(6) excluded in part (11.12.1999) by S.I. 1999/2979, reg. 21(2)(c)

Commencement Information

- I30** S. 175 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to certain savings in art. 3(4))

Marginal Citations

- M58** 1985 c. 66.

176 Power to make provision about certain other charges.

- (1) The Secretary of State may by regulations provide that the general law of insolvency has effect in relation to charges of such descriptions as may be specified in the regulations, and action taken in enforcing them, subject to such provisions as may be specified in the regulations.
- (2) The regulations may specify any description of charge granted in favour of—
 - (a) a body approved under section 170 (certain overseas exchanges and clearing houses),
 - (b) a person included in the list maintained by the [^{F195F196}. . . Authority] for the purposes of [^{F197}section 301 of the Financial Services and Markets Act 2000] (certain money market institutions),
 - (c) the Bank of England,
 - [^{F198}(d) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a relevant regulated activity, or
 - (e) an international securities self-regulating organisation approved for the purposes of an order made under section 22 of the Financial Services and Markets Act 2000,]

for the purpose of securing debts or liabilities arising in connection with or as a result of the settlement of contracts or the transfer of assets, rights or interests on a financial market.

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- (3) The regulations may specify any description of charge granted for that purpose in favour of any other person in connection with exchange facilities or clearing services provided by a recognised investment exchange or recognised clearing house or by any such body, person, authority or organisation as is mentioned in subsection (2).
- (4) Where a charge is granted partly for the purpose specified in subsection (2) and partly for other purposes, the power conferred by this section is exercisable in relation to the charge so far as it has effect for that purpose.
- (5) The regulations may—
- (a) make the same or similar provision in relation to the charges to which they apply as is made by or under sections 174 and 175 in relation to market charges, or
 - (b) apply any of those provisions with such exceptions, additions or adaptations as are specified in the regulations.
- [^{F199}(6) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of a person included in the list maintained by the ^{F200} . . . Authority for the purposes of [^{F201}section 301 of the Financial Services and Markets Act 2000]], or in connection with exchange facilities or clearing services provided by a person included in that list, the Secretary of State and the Treasury shall consult the Authority and the Bank of England.
- (6A) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of the Bank of England, or in connection with settlement arrangements provided by the Bank, the Secretary of State and the Treasury shall consult the Bank.
- (7) Regulations under this section may provide that they apply or do not apply to a charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.
- [^{F202}(8) For the purposes of subsection (2)(d), “relevant regulated activity” means—
- (a) dealing in investments as principal or as agent;
 - (b) arranging deals in investments;
 - [operating a multilateral trading facility;]
- ^{F203}(ba)
- (c) managing investments;
 - (d) safeguarding and administering investments;
 - (e) sending dematerialised instructions; or
 - (f) establishing etc. a collective investment scheme.
- (9) Subsection (8) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.]

Textual Amendments

F195 Words in s. 176(2)(b) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. III para. 48(2)**; S.I. 1998/1120, **art. 2**

F196 Words in s. 176(2)(b) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(2)(a)**

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- F197** Words in s. 176(2)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(2)(b)**
- F198** S. 176(2)(d)(e) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(3)**
- F199** S. 176(6)(6A) substituted (1.6.1998) for s. 176(6) by 1998 c. 11, s. 23, **Sch. 5 Pt. III para. 48(3)**; S.I. 1998/1120, **art. 2**
- F200** Words in s. 176(6) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(4)(a)**
- F201** Words in s. 176(6) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(4)(b)**
- F202** S. 176(8)(9) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(5)**
- F203** S. 176(8)(ba) inserted (1.4.2007 for certain purposes and otherwise 1.11.2007) by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384)**, arts. 1(2), **32**

Modifications etc. (not altering text)

- C29** S. 176: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, **art. 4, Sch. 2 para. 7** (with art. 6).
- C30** S. 176 amended (1.1.1993) by S.I. 1992/3218, **reg. 82(1), Sch. 10 Pt. I para. 29**
S. 176(2) extended (1.1.1996) by S.I. 1995/3275, **reg. 57, Sch. 10 Pt. I para. 13**

Commencement Information

- I31** S. 176 wholly in force: s. 176 not in force at Royal Assent see s. 215(1)(2); s. 176 in force for certain purposes at 25.3.1991 by S.I. 1991/488, **art. 2(2)**; s. 176 wholly in force at 4.7.1995 by S.I. 1995/1591, **art. 2**

Market property

177 Application of margin not affected by certain other interests.

- (1) The following provisions have effect with respect to the application by a recognised investment exchange or recognised clearing house of property (other than land) held by the exchange or clearing house as margin in relation to a market contract.
- (2) So far as necessary to enable the property to be applied in accordance with the rules of the exchange or clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the exchange or clearing house had notice of the interest, right or breach of duty at the time the property was provided as margin.
- (3) No right or remedy arising subsequently to the property being provided as margin may be enforced so as to prevent or interfere with the application of the property by the exchange or clearing house in accordance with its rules.
- (4) Where an exchange or clearing house has power by virtue of the above provisions to apply property notwithstanding an interest, right or remedy, a person to whom the exchange or clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

Modifications etc. (not altering text)

- C31** S. 177 applied (15.8.1995) by S.I. 1995/2049, **reg. 25(1)**

Commencement Information

- I32** S. 177 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, **art. 2, Sch.** (subject to certain savings in art. 3(5))

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PROSPECTIVE

178 Priority of floating market charge over subsequent charges.

- (1) The Secretary of State may by regulations provide that a market charge which is a floating charge has priority over a charge subsequently created or arising, including a fixed charge.
- (2) The regulations may make different provision for cases defined, as regards the market charge or the subsequent charge, by reference to the description of charge, its terms, the circumstances in which it is created or arises, the nature of the charge, the person in favour of whom it is granted or arises or any other relevant factor.

179 Priority of market charge over unpaid vendor's lien.

Where property subject to an unpaid vendor's lien becomes subject to a market charge, the charge has priority over the lien unless the chargee had actual notice of the lien at the time the property became subject to the charge.

Modifications etc. (not altering text)

C32 S. 179 applied (15.8.1995) by S.I. 1995/2049, reg. 25(2)

Commencement Information

I33 S. 179 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to certain savings in art. 3(6))

180 Proceedings against market property by unsecured creditors.

- (1) Where property (other than land) is held by a recognised investment exchange or recognised clearing house as margin in relation to market contracts or is subject to a market charge, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of—
 - (a) in the case of property provided as cover for margin, the investment exchange or clearing house in question, or
 - (b) in the case of property subject to a market charge, the person in whose favour the charge was granted.
- (2) Where consent is given the proceedings may be commenced or continued notwithstanding any provision of the ^{M59}Insolvency Act 1986 or the ^{M60}Bankruptcy (Scotland) Act 1985.
- (3) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

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- (4) In the application of this section to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied shall be omitted.

Modifications etc. (not altering text)

C33 S. 180 applied (15.8.1995) by [S.I. 1995/2049](#), [reg. 25\(3\)](#)

Commencement Information

I34 S. 180 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2](#), [Sch.](#) (subject to certain savings in [art. 3\(7\)](#)).

Marginal Citations

M59 1986 c. 45.

M60 1985 c. 66.

181 Power to apply provisions to other cases.

- (1) [^{F204}A power to which this subsection applies includes the] power to apply sections 177 to 180 to any description of property provided as cover for margin in relation to contracts in relation to which the power is exercised or, as the case may be, property subject to charges in relation to which the power is exercised.
- (2) The regulations may provide that those sections apply with such exceptions, additions and adaptations as may be specified in the regulations.
- [^{F205}(3) Subsection (1) applies to the powers of the Secretary of State and the Treasury to act jointly under—
- (a) sections 170, 172 and 176 of this Act; and
 - (b) section 301 of the Financial Services and Markets Act 2000 (supervision of certain contracts).]

Textual Amendments

F204 Words in s. 181(1) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), [86\(2\)](#)

F205 S. 181(3) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), [86\(3\)](#)

Modifications etc. (not altering text)

C34 S. 181: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [S.I. 1992/1315](#), [art. 4](#), [Sch. 2 para. 7](#) (with [art. 6](#)).

Commencement Information

I35 S. 181 wholly in force: s. 181 not in force at Royal Assent see [s. 215\(1\)\(2\)](#); s. 181 in force for certain purposes at 25.3.1991 by [S.I. 1991/488](#), [art. 2\(2\)](#); s. 181 wholly in force at 4.7.1995 by [S.I. 1995/1591](#), [art. 2](#)

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Supplementary provisions

182 Powers of court in relation to certain proceedings begun before commencement.

(1) The powers conferred by this section are exercisable by the court where insolvency proceedings in respect of—

- (a) a member of a recognised investment exchange or a recognised clearing house, or
- (b) a person by whom a market charge has been granted,

are begun on or after 22nd December 1988 and before the commencement of this section.

That person is referred to in this section as “the relevant person”.

(2) For the purposes of this section “insolvency proceedings” means proceedings under Part II, IV, V or IX of the ^{M61}Insolvency Act 1986 (administration, winding up and bankruptcy) or under the ^{M62}Bankruptcy (Scotland) Act 1985; and references in this section to the beginning of such proceedings are to—

- (a) the presentation of a petition on which an administration order, winding-up order, bankruptcy order or award of sequestration is made, or
- (b) the passing of a resolution for voluntary winding up.

(3) This section applies in relation to—

- (a) in England and Wales, the administration of the insolvent estate of a deceased person, and
- (b) in Scotland, the administration by a judicial factor appointed under section 11A of the ^{M63}Judicial Factors (Scotland) Act 1889 of the insolvent estate of a deceased person,

as it applies in relation to insolvency proceedings.

In such a case references to the beginning of the proceedings shall be construed as references to the death of the relevant person.

(4) The court may on an application made, within three months after the commencement of this section, by—

- (a) a recognised investment exchange or recognised clearing house, or
- (b) a person in whose favour a market charge has been granted,

make such order as it thinks fit for achieving, except so far as assets of the relevant person have been distributed before the making of the application, the same result as if the provisions of Schedule 22 had come into force on 22nd December 1988.

(5) The provisions of that Schedule (“the relevant provisions”) reproduce the effect of certain provisions of this Part as they appeared in the Bill for this Act as introduced into the House of Lords and published on that date.

(6) The court may in particular—

- (a) require the relevant person or a relevant office-holder—
 - (i) to return property provided as cover for margin or which was subject to a market charge, or to pay to the applicant or any other person the proceeds of realisation of such property, or
 - (ii) to pay to the applicant or any other person such amount as the court estimates would have been payable to that person if the

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relevant provisions had come into force on 22nd December 1988 and market contracts had been settled in accordance with the rules of the recognised investment exchange or recognised clearing house, or a proportion of that amount if the property of the relevant person or relevant office-holder is not sufficient to meet the amount in full;

- (b) provide that contracts, rules and dispositions shall be treated as not having been void;
 - (c) modify the functions of a relevant office-holder, or the duties of the applicant or any other person, in relation to the insolvency proceedings, or indemnify any such person in respect of acts or omissions which would have been proper if the relevant provisions had been in force;
 - (d) provide that conduct which constituted an offence be treated as not having done so;
 - (e) dismiss proceedings which could not have been brought if the relevant provisions had come into force on 22nd December 1988, and reverse the effect of any order of a court which could not, or would not, have been made if those provisions had come into force on that date.
- (7) An order under this section shall not be made against a relevant office-holder if the effect would be that his remuneration, costs and expenses could not be met.

Modifications etc. (not altering text)

C35 S. 182 amended by [S.I. 1991/880, reg. 19\(1\)](#)

Commencement Information

I36 S. 182 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

M61 1986 c. 45.

M62 1985 c. 66.

M63 1889 c. 39.

183 Insolvency proceedings in other jurisdictions.

- (1) The references to insolvency law in section 426 of the ^{M64}Insolvency Act 1986 (co-operation with courts exercising insolvency jurisdiction in other jurisdictions) include, in relation to a part of the United Kingdom, the provisions made by or under this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to any provisions made by or under this Part.
- (2) A court shall not, in pursuance of that section or any other enactment or rule of law, recognise or give effect to—
- (a) any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom, or
 - (b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,

in so far as the making of the order or the doing of the act would be prohibited in the case of a court in the United Kingdom or a relevant office-holder by provisions made by or under this Part.

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Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) Subsection (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the^{M65}Civil Jurisdiction and Judgments Act 1982 [^{F206}or Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters][^{F207}, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ No. L 299 16.11.2005 at p62)] .

Textual Amendments

F206 Words in s. 183(3) inserted (3.1.2002) by S.I. 2001/3929, art. 5, Sch. 3 para. 21

F207 Words in s. 183(3) inserted (1.7.2007) by The Civil Jurisdiction and Judgments Regulations 2007 (S.I. 2007/1655), reg. 5, Sch. para. 15(2)

Commencement Information

I37 S. 183 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

Marginal Citations

M64 1986 c. 45.

M65 1982 c. 27.

184 Indemnity for certain acts, &c.

- (1) Where a relevant office-holder takes any action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognised investment exchange or recognised clearing house, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by the office-holder's own negligence.
- (2) Any failure by a recognised investment exchange or recognised clearing house to comply with its own rules in respect of any matter shall not prevent that matter being treated for the purposes of this Part as done in accordance with those rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the rules.
- (3) No recognised investment exchange or recognised clearing house, nor any officer or servant or member of the governing body of a recognised investment exchange or recognised clearing house, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.
- (4) The functions to which subsection (3) applies are the functions of the exchange or clearing house so far as relating to, or to matters arising out of—
- its default rules, or
 - any obligations to which it is subject by virtue of this Part.
- (5) No person [^{F208}to whom the exercise of any function of a recognised investment exchange or recognised clearing house is delegated under its default rules], nor any officer or servant of such a person, shall be liable in damages for anything done or

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omitted in the discharge or purported discharge of those functions unless the act or omission is shown to have been in bad faith.

Textual Amendments

F208 Words in s. 184(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 87

Commencement Information

I38 S. 184 wholly in force at 1.10.1991; s. 184 in force for certain purposes on 25.3.1991 see s. 215 and S.I. 1991/488, art. 2(2), s. 184 in force for certain purposes on 25.4.1991 see s. 215 and S.I. 1991/878, art. 2 Sch., s. 184 wholly in force at 1.10.1991 see S.I. 1991/2173, art. 3

185 Power to make further provision by regulations.

- (1) The Secretary of State may by regulations make such further provision as appears to him necessary or expedient for the purposes of this Part.
- (2) Provision may, in particular, be made—
 - (a) for integrating the provisions of this Part with the general law of insolvency, and
 - (b) for adapting the provisions of this Part in their application to overseas investment exchanges and clearing houses.
- (3) Regulations under this section may add to, amend or repeal any of the provisions of this Part or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.
- [^{F209}(4) References in this section to the provisions of this Part include any provision made under section 301 of the Financial Services and Markets Act 2000.]

Textual Amendments

F209 S. 185(4) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 88

Modifications etc. (not altering text)

C36 S. 185: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6).

Commencement Information

I39 S. 185 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and S.I. 1991/488, art. 2(2), and for all remaining purposes at 10.8.1998 by S.I. 1998/1747, art. 2

186 Supplementary provisions as to regulations.

- (1) Regulations under this Part may make different provision for different cases and may contain such incidental, transitional and other supplementary provisions as appear to the Secretary of State to be necessary or expedient.
- (2) Regulations under this Part shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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Modifications etc. (not altering text)

C37 S. 186: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by s.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6)

Commencement Information

I40 S.186 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and S.I. 1991/488, art. 2(2) and for all remaining purposes at 8.10.1998 by S.I. 1998/1747, art. 2

187 Construction of references to parties to market contracts.

- (1) Where a person enters into market contracts in more than one capacity, the provisions of this Part apply (subject as follows) as if the contracts entered into in each different capacity were entered into by different persons.
- (2) References in this Part to a market contract to which a person is a party include (subject as follows, and unless the context otherwise requires) contracts to which he is party as agent.
- (3) The Secretary of State may by regulations—
 - (a) modify or exclude the operation of subsections (1) and (2), and
 - (b) make provision as to the circumstances in which a person is to be regarded for the purposes of those provisions as acting in different capacities.

Modifications etc. (not altering text)

C38 S. 187(1) amended by S.I. 1991/880, reg. 16(2)

Commencement Information

I41 S.187 wholly in force; s. 187(3) in force for certain purposes at 25.3.1991, s. 187 wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, art. 2(2); S.I. 1991/878, art. 2, Sch.

188 Meaning of “default rules” and related expressions.

- (1) In this Part “default rules” means rules of a recognised investment exchange or recognised clearing house which provide for the taking of action in the event of a person appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.
- (2) References in this Part to a “defaulter” are to a person in respect of whom action has been taken by a recognised investment exchange or recognised clearing house under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to “default” shall be construed accordingly.
- (3) In this Part “default proceedings” means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.
- (4) If an exchange or clearing house takes action under its default rules in respect of a person, all subsequent proceedings under its rules for the purposes of or in connection with the settlement of market contracts to which the defaulter is a party shall be treated as done under its default rules.

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Commencement Information

I42 S. 188 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

189 Meaning of “relevant office-holder”.

- (1) The following are relevant office-holders for the purposes of this Part—
- (a) the official receiver,
 - (b) any person acting in relation to a company as its liquidator, provisional liquidator, administrator or administrative receiver,
 - (c) any person acting in relation to an individual (or, in Scotland, any debtor within the meaning of the ^{M66}Bankruptcy (Scotland) Act 1985) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate,
 - (d) any person acting as administrator of an insolvent estate of a deceased person.
- (2) In subsection (1)(b) “company” means any company, society, association, partnership or other body which may be wound up under the ^{M67}Insolvency Act 1986.

Commencement Information

I43 S. 189 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

Marginal Citations

M66 1985 c. 66.

M67 1986 c.45.

190 Minor definitions.

- (1) In this Part—
- “administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986;
- [^{F210}“the Authority” means the Financial Services Authority;]
- “charge” means any form of security, including a mortgage and, in Scotland, a heritable security;
- ^{F211}
...
- “interim trustee” and “permanent trustee” have the same meaning as in the Bankruptcy (Scotland) Act 1985;
- ^{F211}
...
- “overseas”, in relation to an investment exchange or clearing house, means having its head office outside the United Kingdom;
- [^{F212}“recognised clearing house” and “recognised investment exchange” have the same meaning as in the Financial Services and Markets Act 2000;]
- ^{F211}
...
- “set-off”, in relation to Scotland, includes compensation;
- [^{F213}“The Stock Exchange” means the London Stock Exchange Limited;]
- “UK”, in relation to an investment exchange or clearing house, means having its head office in the United Kingdom.

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- (2) References in this Part to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.
- (3) In this Part the expressions “margin” and “cover for margin” have the same meaning.
- ^{F214}(4)
- (5) For the purposes of this Part a person shall be taken to have notice of a matter if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.
- This does not apply for the purposes of a provision requiring “actual notice”.
- (6) References in this Part to the law of insolvency include references to every provision made by or under the ^{M68}Insolvency Act 1986 or the ^{M69}Bankruptcy (Scotland) Act 1985; and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 are to that law or provision as modified by the Building Societies Act 1986.
- (7) In relation to Scotland, references in this Part—
- (a) to sequestration include references to the administration by a judicial factor of the insolvent estate of a deceased person, and
 - (b) to an interim or permanent trustee include references to a judicial factor on the insolvent estate of a deceased person,
- unless the context otherwise requires.

Textual Amendments

- F210** Definition of “the Authority” in s. 190(1) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(2)
- F211** Definitions of “clearing house”, “investment”, “investment exchange” and “recognised” in s. 190(1) repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(3)
- F212** Definitions of “recognised clearing house” and “recognised investment exchange” in s. 190(1) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(4)
- F213** Definition of “The Stock Exchange” in s. 190(1) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(5)
- F214** S. 190(4) repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(6)

Commencement Information

- I44** S. 190 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2](#), [Sch.](#)

Marginal Citations

- M68** 1986 c. 45.
M69 1985 c. 66.

191 Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section or paragraph)—

administrative receiver	section 190(1)
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[^{F215} the Authority	section 190(1)]
charge	section 190(1)
F216	F216
.
cover for margin	section 190(3)
default rules (and related expressions)	section 188
designated non-member	section 155(2)
F216	F216
.
insolvency law (and similar expressions)	section 190(6)
interim trustee	section 190(1) and (7)(b)
F216	F216
.
F216	F216
.
margin	section 190(3)
market charge	section 173
market contract	section 155
notice	section 190(5)
overseas (in relation to an investment exchange or clearing house)	section 190(1)
party (in relation to a market contract)	section 187
permanent trustee	section 190(1) and (7)(b)
F216	F216
.
[^{F215} recognised clearing house and recognised investment exchange	section 190(1)]
relevant office-holder	section 189
sequestration	section 190(7)(a)
set off (in relation to Scotland)	section 190(1)
settlement and related expressions (in relation to a market contract)	section 190(2)
The Stock Exchange	section 190(1)
trustee, interim or permanent (in relation to Scotland)	section 190(7)(b)
UK (in relation to an investment exchange or clearing house)	section 190(1).

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Textual Amendments

F215 Entries in the Table in s. 191 inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 89(7)(b)

F216 Entries in the Table in s. 191 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 89(7)(a)

Commencement Information

I45 S. 191 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, **art. 2**, **Sch.**

PART VIII

AMENDMENTS OF THE FINANCIAL SERVICES ACT 1986

F217 **192**

Textual Amendments

F217 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

F218 **193**

Textual Amendments

F218 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

F219 **194**

Textual Amendments

F219 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

F220 **195**

Textual Amendments

F220 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

F221 **196**

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Textual Amendments
F221 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F222 197

Textual Amendments
F222 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F223 198

Textual Amendments
F223 S. 198 repealed (19.6.1995) by S.I. 1995/1537, regs. 1(1), 17, Sch. 2 Pt. II para.10

F224 199

Textual Amendments
F224 S. 199 repealed (19.6.1995) by S.I. 1995/1537, regs. 1(1), 17, Sch. 2 Pt. II para.10

200 Jurisdiction of High Court and Court of Session.

F225 (1)

(2) In Schedule 5 to the ^{M70}Civil Jurisdiction and Judgments Act 1982 (proceedings excluded from general provisions as to allocation of jurisdiction within the United Kingdom), for paragraph 10 substitute—

Financial Services Act 1986

“10 Proceedings such as are mentioned in section 188 of the Financial Services Act 1986.”.

Textual Amendments
F225 S. 200(1) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(j)
Marginal Citations
M70 1982 c. 27.

F226 201

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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.....
Textual Amendments

F226 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F227 **202**

.....
Textual Amendments

F227 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F228 **203**

.....
Textual Amendments

F228 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F229 **204**

.....
Textual Amendments

F229 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F230 **205**

.....
Textual Amendments

F230 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F231 **206**

.....
Textual Amendments

F231 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

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PART IX

TRANSFER OF SECURITIES

Modifications etc. (not altering text)

C39 Part IX (s. 207): functions of the Secretary of State transferred (7.6.1992) to the Treasury by S.I. 1992/1315, **art. 2(1)** (with **art. 6**).

207 Transfer of securities.

F232

Textual Amendments

F232 S. 207 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

PART X

MISCELLANEOUS AND GENERAL PROVISIONS

Miscellaneous

208 Summary proceedings in Scotland for offences in connection with disqualification of directors.

In section 21 of the ^{M71}Company Directors Disqualification Act 1986 (application of provisions of the ^{M72}Insolvency Act 1986), after subsection (3) add—

“(4) For the purposes of summary proceedings in Scotland, section 431 of that Act applies to summary proceedings for an offence under section 11 or 13 of this Act as it applies to summary proceedings for an offence under Parts I to VII of that Act.”.

Marginal Citations

M71 1986 c. 46.

M72 1986 c. 45.

F233 209

Textual Amendments

F233 S. 209 repealed (1.3.1994) by 1993 c. 36, s. 79(14), **Sch. 6 Pt.I**; S.I. 1994/242, **art. 2**, Sch.

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210 Restriction of duty to supply statements of premium income.

- (1) Schedule 3 to the ^{M73}Policyholders Protection Act 1975 (provisions with respect to levies on authorised insurance companies) is amended as follows.
- (2) For paragraph 4 (statements of premium income to be sent to Secretary of State) substitute—

“4

- (1) The Secretary of State may by notice in writing require an authorised insurance company to send him a statement of—
 - (a) any income of the company for the year preceding that in which the notice is received by the company which is income liable to the general business levy, and
 - (b) any income of the company for that year which is income liable to the long term business levy.
 - (2) An authorised insurance company which receives a notice under this paragraph shall send the statement required by the notice to the Secretary of State within three months of receiving the notice.
 - (3) Where an authorised insurance company is required under this paragraph to send a statement to the Secretary of State in respect of income of both descriptions mentioned in sub-paragraph (1)(a) and (b) above it shall send a separate statement in respect of income of each description.”.
- (3) In paragraph 5(3) (application of provisions of the ^{M74}Insurance Companies Act 1982 to failure to meet obligation imposed by paragraph 4) for “the obligation imposed on an insurance company by paragraph 4” substitute “an obligation imposed on an insurance company under paragraph 4”.
 - (4) In paragraph 6 (declaration and enforcement of levies) omit sub-paragraph (4) (provision about notices).
 - (5) After paragraph 7 insert—

“8 Notices under paragraphs 4 and 6

A notice under paragraph 4 or 6 above may be sent by post, and a letter containing such a notice shall be deemed to be properly addressed if it is addressed to the insurance company to which it is sent at its last known place of business in the United Kingdom.”.

Marginal Citations

M73 1975 c. 75.

M74 1982 c. 50.

211 Building societies: miscellaneous amendments.

- (1) In section 104 of the ^{M75}Building Societies Act 1986 (power to assimilate law relating to building societies and law relating to companies), in subsection (2) (relevant

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provisions of that Act), omit the word “and” before paragraph (d) and after that paragraph add—

“; and

(e) section 110 (provisions exempting officers and auditors from liability).”.

(2) In Schedule 15 to the Building Societies Act 1986 (application of companies winding-up legislation)—

(a) in paragraph 1(a) (provisions of ^{M76}Insolvency Act 1986 applied) for “and XII” substitute “, XII and XIII”;

(b) in paragraph 3(2)(b) (adaptations: references to be omitted), omit “, a shadow director”.

(3) In the ^{M77}Company Directors Disqualification Act 1986, after section 22 insert—

“22A Application of Act to building societies.

(1) This Act applies to building societies as it applies to companies.

(2) References in this Act to a company, or to a director or an officer of a company include, respectively, references to a building society within the meaning of the Building Societies Act 1986 or to a director or officer, within the meaning of that Act, of a building society.

(3) In relation to a building society the definition of “shadow director” in section 22(5) applies with the substitution of “building society” for “company”.

(4) In the application of Schedule 1 to the directors of a building society, references to provisions of the Insolvency Act or the Companies Act include references to the corresponding provisions of the Building Societies Act 1986.”.

Commencement Information

I46 S. 211 wholly in force; s. 211(2)(3) in force at 31.7.1990 see S.I. 1990/1392; s. 211(1) in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(b)

Marginal Citations

M75 1986 c. 53.

M76 1986 c. 45.

M77 1986 c. 46.

General

212 Repeals. U.K.

The enactments mentioned in Schedule 24 are repealed to the extent specified there.

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Extent Information

E2 For information relating to the extent of this section see [s. 213](#)

Commencement Information

I47 [S. 212](#) partly in force: s. 212 partly in force at Royal Assent see [s. 215\(1\)\(2\)](#); [s. 212](#) in force for certain purposes at 1.7.1991 by [S.I. 1991/488](#), [art. 2\(4\)](#); [s. 212](#) partly in force for certain purposes at 1.10.1991 and 1.11.1991 by [S.I. 1991/1996](#), [art. 2\(1\)\(2\)](#); [s. 212](#) in force for certain purposes at 3.7.1995 by [S.I. 1995/1352](#), [art. 3\(c\)\(i\)\(ii\)](#)

212 Repeals. E+W+S

The enactments mentioned in Schedule 24 are repealed to the extent specified there.

213 Provisions extending to Northern Ireland.

- (1) The provisions of this Act extend to Northern Ireland so far as they amend, or provide for the amendment of, an enactment which so extends.
- (2) So far as any provision of this Act amends the ^{M78}Companies Act 1985 or the ^{M79}Insolvency Act 1986, its application to companies registered or incorporated in Northern Ireland is subject to section 745(1) of the Companies Act 1985 or section 441(2) of the Insolvency Act 1986, as the case may be.
- (3) In Part III (investigations and powers to obtain information), sections 82 to 91, (powers exercisable to assist overseas regulatory authorities) extend to Northern Ireland.
- (4) Part VI (mergers and related matters) extends to Northern Ireland.
- (5) In Part VII (financial markets and insolvency) the following provisions extend to Northern Ireland—
 - (a) sections 154 and 155 (introductory provisions and definition of “market contract”),
 - ^{F234}(b)
 - (c) sections 157, 160, 162, and 166 to 169 (provisions relating to recognised investment exchanges and clearing houses),
 - (d) sections 170 to 172 (power to extend provisions to other financial markets),
 - (e) section 184 (indemnity for certain acts), and
 - (f) sections 185 to 191 (supplementary provisions).
- ^{F234}(6)
- (7) Part IX (transfer of securities) extends to Northern Ireland.
^{F235}
- (8) In Part X (miscellaneous and general provisions), this section and sections 214 to 216 (general provisions) extend to Northern Ireland.
- (9) Except as mentioned above, the provisions of this Act do not extend to Northern Ireland.

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Textual Amendments

F234 S. 213(5)(b)(6) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(l)

F235 Words in s. 213(7) repealed (2.12.1999) by 1998 c. 47, s. 100(2), Sch. 15 (with s. 95); S.I. 1999/3209, art. 2, Sch.

Marginal Citations

M78 1985 c. 6.

M79 1986 c. 45.

^{F236}**214**

Textual Amendments

F236 S. 214 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(m)

215 Commencement and transitional provisions.

- (1) The following provisions of this Act come into force on Royal Assent—
 - (a) in Part V (amendments of company law), section 141 (application to declare dissolution of company void);
 - (b) in Part VI (mergers)—
 - (i) sections 147 to 150, and
 - (ii) paragraphs 2 to 12, 14 to 16, 18 to 20, 22 to 25 of Schedule 20, and section 153 so far as relating to those paragraphs;
 - (c) in Part VIII (amendments of the ^{M80}Financial Services Act 1986), section 202 (offers of short-dated debentures);
 - (d) in Part X (miscellaneous and general provisions), the repeals made by Schedule 24 in sections 71, 74, 88 and 89 of, and Schedule 9 to, the ^{M81}Fair Trading Act 1973, and section 212 so far as relating to those repeals.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument; and different days may be appointed for different provisions and different purposes.
- (3) An order bringing into force any provision may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient.
- (4) The Secretary of State may also by order under this section amend any enactment which refers to the commencement of a provision brought into force by the order so as to substitute a reference to the actual date on which it comes into force.

Subordinate Legislation Made

P1 Power of appointment conferred by s. 215(2) partly exercised: S.I. 1990/98, 142, 354, 355, 713, 1392, 1707, 2569

S. 215(2) power partly exercised: 1.1.2005 appointed for specified provisions by {S.I. 2004/3322}, art. 2(1)

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Marginal Citations

M80 1986 c. 60.

M81 1973 c. 41.

216 Short title.

This Act may be cited as the Companies Act 1989.

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SCHEDULES

F237F237 SCHEDULE 1

Textual Amendments

F237 Sch. 1 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12)

F238F238 SCHEDULE 2

Textual Amendments

F238 Sch. 2 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12)

F239F239 SCHEDULE 3

Textual Amendments

F239 Sch. 3 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12)

F240F240 SCHEDULE 4

Textual Amendments

F240 Sch. 4 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12)

SCHEDULE 5

Document Generated: 2024-02-29

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F243F243 SCHEDULE 5

Textual Amendments

F243 Sch. 5 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

F245F245 SCHEDULE 6

Textual Amendments

F245 Sch. 6 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

F246F246 SCHEDULE 7

Textual Amendments

F246 Sch. 7 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

F247F247 SCHEDULE 8

Textual Amendments

F247 Sch. 8 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

F248F248 SCHEDULE 9

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Textual Amendments
F248 Sch. 9 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

SCHEDULE 10

Section 23.

AMENDMENTS CONSEQUENTIAL ON PART I

PART I

AMENDMENTS OF THE COMPANIES ACT 1985

1 In section 46 (meaning of “unqualified” auditors’ report in section 43(3)), for subsections (2) to (6) substitute—

“(2) If the balance sheet was prepared for a financial year of the company, the reference is to an auditors’ report stating without material qualification the auditors’ opinion that the balance sheet has been properly prepared in accordance with this Act.

(3) If the balance sheet was not prepared for a financial year of the company, the reference is to an auditors’ report stating without material qualification the auditors’ opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been so prepared.

For the purposes of an auditors’ report under this subsection the provisions of this Act shall be deemed to apply with such modifications as are necessary by reason of the fact that the balance sheet is not prepared for a financial year of the company.

(4) A qualification shall be regarded as material unless the auditors state in their report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company’s 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.

In this subsection “net assets” and “undistributable reserves” have the meaning given by section 264(2) and (3).”.

2 **F249**

Textual Amendments
F249 Sch. 10 para. 2 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

3 **F250**

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Textual Amendments

F250 Sch. 10 para. 3 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 1

4 **F251**

Textual Amendments

F251 Sch. 10 para. 4 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

5 **F252**

Textual Amendments

F252 Sch. 10 para. 5 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

6 **F253**

Textual Amendments

F253 Sch. 10 para. 6 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 1

7 **F254**

Textual Amendments

F254 Sch. 10 para. 7 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

8 **F255**

Textual Amendments

F255 Sch. 10 para. 8 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

9 In section 289(4) for “section 252(5)” substitute “section 250(3)”.

10 **F256**

Textual Amendments

F256 Sch. 10 para. 10 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194, {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

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F257 11

Textual Amendments

F257 Sch. 10 para. 11 repealed (28.2.1994) by S.I. 1994/233, regs. 1(2), 6(5)(b)

- 12 In section 699(3) for “section 241(3)” substitute “section 242(1)”.
- 13 In Part XXIII (oversea companies), for Chapter II (delivery of accounts) substitute—

“CHAPTER II

DELIVERY OF ACCOUNTS AND REPORTS

Preparation of accounts and reports by oversea companies.

- 700 (1) Every oversea company shall in respect of each financial year of the company prepare the like accounts and directors’ report, and cause to be prepared such an auditors’ report, as would be required if the company were formed and registered under this Act.
- (2) The Secretary of State may by order—
- (a) modify the requirements referred to in subsection (1) for the purpose of their application to oversea companies;
 - (b) exempt an oversea company from those requirements or from such of them as may be specified in the order.
- (3) An order may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (4) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Oversea company’s financial year and accounting reference periods.

- 701 (1) Sections 223 to 225 (financial year and accounting reference periods) apply to an oversea company, subject to the following modifications.
- (2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Great Britain.
 - (3) Omit section 225(4) (restriction on frequency with which current accounting reference period may be extended).

Delivery to registrar of accounts and reports of oversea company.

- 702 (1) An oversea company shall in respect of each financial year of the company deliver to the registrar copies of the accounts and reports prepared in accordance with section 700.

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If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

- (2) In relation to an overseas company the period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference period.

This is subject to the following provisions of this section.

- (3) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company's establishing a place of business in Great Britain.
- (4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under section 225 (alteration of accounting reference date), the period allowed is that applicable in accordance with the above provisions or three months from the date of the notice under that section, whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to an overseas company extend that period by such further period as may be specified in the notice.
- (6) In this section "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.

Penalty for non-compliance.

- 703 (1) If the requirements of section 702(1) are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Act, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.
- (3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Act."

14 F258

Textual Amendments

F258 Sch. 10 para. 14 repealed (20.1.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300, [Sch. 16](#); [S.I. 2006/3428](#), [art. 7\(b\)](#), [Sch. 3 Pt. 1](#)

15 For section 742 (expressions used in connection with accounts) substitute—

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“742 Expressions used in connection with accounts.

(1) In this Act, unless a contrary intention appears, the following expressions have the same meaning as in Part VII (accounts)—

- “annual accounts”,
- “accounting reference date” and “accounting reference period”,
- “balance sheet” and “balance sheet date”,
- “current assets”,
- “financial year”, in relation to a company,
- “fixed assets”,
- “parent company” and “parent undertaking”,
- “profit and loss account”, and
- “subsidiary undertaking”.

(2) References in this Act to “realised profits” and “realised losses”, in relation to a company’s accounts, shall be construed in accordance with section 262(3).”.

16 In section 744 (interpretation), omit the definition of “authorised institution” and at the appropriate place insert—

““banking company” means a company which is authorised under the Banking Act 1987;”.

17 In Schedule 1, in paragraph 2(2)(a) for “section 252(5)” substitute “section 250(3)”.

18 (1) Schedule 2 (interpretation of references to “beneficial interest”) is amended as follows.

(2) After the heading at the beginning of the Schedule, and before the cross-heading preceding paragraph 1, insert the following heading—

“PART I

REFERENCES IN SECTIONS 23, 145, 146 AND 148”.

(3) In paragraph 1—

- (a) in sub-paragraph (1) omit “paragraph 60(2) of Schedule 4, or paragraph 19(3) of Schedule 9”; and
- (b) omit sub-paragraph (5).

(4) In paragraph 3—

- (a) in sub-paragraph (1) omit “, paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”; and
- (b) omit sub-paragraph (3).

(5) In paragraph 4—

- (a) in sub-paragraph (1) omit “(whether as personal representative or otherwise)”, and
- (b) in sub-paragraph (2) omit “, paragraph 60(2) of Schedule 4 and paragraph 19(3) of Schedule 9”; and at the end add—

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“(3) As respects sections 145, 146 and 148, sub-paragraph (1) above applies where a company is a personal representative as it applies where a company is a trustee.”.

(6) In paragraph 5(1) for “this Schedule” substitute “this Part of this Schedule”.

(7) ^{F259}

Textual Amendments

F259 Sch. 10 para. 18(7) repealed (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 2](#)

19 ^{F260}

Textual Amendments

F260 Sch. 10 para. 19 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); [S.I. 2007/3495](#), art. 8, [Sch. 2 Pt. 1](#) (with arts. 7, 12)

20 ^{F261}

Textual Amendments

F261 Sch. 10 para. 20 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); [S.I. 2007/3495](#), art. 8, [Sch. 2 Pt. 1](#) (with arts. 7, 12)

21 ^{F262}

Textual Amendments

F262 Sch. 10 para. 21 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); [S.I. 2007/3495](#), art. 8, [Sch. 2 Pt. 1](#) (with arts. 7, 12)

22 ^{F263}

Textual Amendments

F263 Sch. 10 para. 22 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); [S.I. 2007/3495](#), art. 8, [Sch. 2 Pt. 1](#) (with arts. 7, 12)

23 ^{F264}

Textual Amendments

F264 Sch. 10 para. 23 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); [S.I. 2007/3495](#), art. 8, [Sch. 2 Pt. 1](#) (with arts. 7, 12)

24 (1) Schedule 24 (punishment of offences) is amended as follows.

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- (2) The existing entries for provisions in Part VII are amended as follows, and shall be re-ordered according to the new order of the sections in that Part:

<i>Provision of Part VII</i>	<i>Amendment</i>
223(1)	In column 1, for “223(1)” substitute “221(5) or 222(4)”.
223(2)	In column 1, for “223(2)” substitute “222(6)”.
	In column 2, for “222(4)” substitute “222(5)”.
231(3)	In column 1, for “231(3)” substitute “231(6)”.
231(4)	In column 1, for “231(4)” substitute “232(4)”.
	In column 2, for “Schedule 5, Part V” substitute “Schedule 6, Part I”.
235(7)	In column 1, for “235(7)” substitute “234(5)”.
	In column 2, for “the section” substitute “Part VII”.
238(2)	In column 1, for “238(2)” substitute “233(6)”.
240(5)	In column 1, for “240(5)” substitute “238(5)”.
	In column 2, for “company balance sheet” substitute “company’s annual accounts”.
243(1)	In column 1, for “243(1)” substitute “241(2) or 242(2)”.
	In column 2, for “company accounts” substitute “company’s annual accounts, directors’ report and auditors’ report”.
245(1)	Omit the entry.
245(2)	Omit the entry.
246(2)	In column 1, for “246(2)” substitute “239(3)”.
	In column 2, after “accounts” insert “and reports”.
254(6)	In column 1, for “254(6)” substitute “240(6)”.
	In column 2, for the present words substitute “Failure to comply with

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	requirements in connection with publication of accounts”.
255(5)	Omit the entry.
260(3)	Omit the entry.

(3) At the appropriate places insert the following new entries—

“233(5)	Approving defective accounts.	1. On indictment.	A fine
		2. Summary.	The statutory maximum.
234A(4)	Laying, circulating or delivering directors’ report without required signature.	Summary.	One-fifth of the statutory maximum.
236(4)	Laying, circulating or delivering auditors’ report without required signature.	Summary.	One-fifth of the statutory maximum.
251(6)	Failure to comply with requirements in relation to summary financial statements.	Summary.	One-fifth of the statutory maximum.”.

(4) In the entry for section 703(1) (failure by oversea company to comply with requirements as to accounts and reports), in column 2 for the words from “s.700” to the end substitute “requirements as to accounts and reports”.

PART II

AMENDMENTS OF OTHER ENACTMENTS

Betting, Gaming and Lotteries Act 1963 (c.2)

25 F265

Textual Amendments

F265 Sch. 10 para. 25 repealed (1.9.2007) by **Gambling Act 2005 (c. 19)**, ss. 356(4)(5), 358, **Sch. 17** (with ss. 352, 354); S.I. 2006/3272, **art. 2(4)** (with Sch. 4)

Harbours Act 1964 (c.40)

26 (1) Section 42 of the Harbours Act 1964 (accounts and reports of statutory harbour undertakers) is amended as follows.

(2) For subsection (2) substitute—

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“(2) Where a statutory harbour undertaker is a parent undertaking with subsidiary undertakings which carry on harbour activities or any associated activities, then, it shall be the duty of the company also to prepare group accounts relating to the harbour activities and associated activities carried on by it and its subsidiary undertakings.”

- (3) In subsection (6) (application of provisions of the ^{M88}Companies Act 1985)—
 - (a) in paragraph (a) for “company accounts” substitute “ individual company accounts ”;
 - (b) in paragraph (c) omit the words “required to be attached to a company’s balance sheet”.

- (4) In subsection (9), for the definition of “holding company” and “subsidiary” substitute—

““parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 1985;”.

Marginal Citations
 M88 1985 c. 6.

Coal Industry Act 1971 (c.16)

27 F266

Textual Amendments
 F266 Sch. 10 para. 27 repealed (27.3.2004) by 1994 c. 21, ss. 67, 68(3)(b)(c), Sch. 11 Pt. IV (with s. 40(7), 66); S.I. 2004/144, art. 3

Aircraft and Shipbuilding Industries Act 1977 (c.3)

- 28 (1) Section 17 of the Aircraft and Shipbuilding Industries Act 1977 (British Shipbuilders: accounts and audit) is amended as follows.
 - (2) In subsection (1)(c) (duty to prepare consolidated accounts) for “subsidiaries” substitute “ subsidiary undertakings ”.
 - (3) In subsection (9) (copies of accounts to be sent to the Secretary of State) for “subsidiaries” substitute “ subsidiary undertakings ” and for “subsidiary” substitute “ subsidiary undertaking ”.
 - (4) After subsection (9) add—

“(10) In this section “subsidiary undertaking” has the same meaning as in Part VII of the Companies Act 1985.”.

Crown Agents Act 1979 (c.43)

F267 29

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Textual Amendments

F267 Sch. 10 para. 29 repealed (21.3.1997) by 1995 c. 24, s. 13(2), **Sch. 2 Pt.I**; S.I. 1997/1139, **art.2**

British Telecommunications Act 1981 (c.38)

F268 30

Textual Amendments

F268 Sch. 10 para. 30 repealed (26.3.2001) by 2000 c. 26, s. 127(6), **Sch. 9**; S.I. 2001/1148, **art. 2(2)**, **Sch.** Table

Transport Act 1981 (c.56)

31 In section 11(4) of the Transport Act 1981, for “section 235” substitute “ section 234 ”.

Iron and Steel Act 1982 (c.25)

32 In section 24(5) of the Iron and Steel Act 1982 (meaning of “directors’ report”) for the words from “which, under section 235” to the end substitute “ which is required to be prepared under section 234 of the Companies Act 1985 ”.

Oil and Pipelines Act 1985 (c.62)

33 In Schedule 3 to the Oil and Pipelines Act 1985 (Oil and Pipelines Agency: financial and other provisions), in paragraph 9(2) (duty to prepare consolidated accounts) for “subsidiaries” (three times) substitute “ subsidiary undertakings ”, and at the end of that sub-paragraph add—

“In this sub-paragraph “subsidiary undertaking” has the same meaning as in Part VII of the Companies Act 1985.”.

Patents, Designs and Marks Act 1986 (c.39)

34 In Schedule 2 to the Patents, Designs and Marks Act 1986 (service marks), in paragraph 1(2) (provisions in which reference to trade mark includes service mark) for sub-paragraph (ii) substitute—

“(ii) Part I of Schedule 4 and paragraphs 5(2)(d) and 10(1)(b) and (2) of Schedule 9 (form of company balance sheets); and”.

Company Directors Disqualification Act 1986 (c.46)

35 (1) The Company Directors Disqualification Act 1986 is amended as follows.

(2) In section 3(3)(b) (default orders)—

- (a) in sub-paragraph (i) for “section 244” substitute “ section 242(4) ”, and
- (b) after that sub-paragraph insert—

“(ia) section 245B of that Act (order requiring preparation of revised accounts),”.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.
Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(3) In Schedule 1, for paragraph 5 substitute—

- “5 The extent of the director’s responsibility for any failure by the directors of the company to comply with—
- (a) section 226 or 227 of the Companies Act (duty to prepare annual accounts), or
 - (b) section 233 of that Act (approval and signature of accounts).”.

Financial Services Act 1986 (c.60)

F269³⁶

Textual Amendments
F269 Sch. 10 paras. 36, 37 repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 75\(n\)](#)

Banking Act 1987 (c.22)

F270³⁷

Textual Amendments
F270 Sch. 10 paras. 36, 37 repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 75\(n\)](#)

Income and Corporation Taxes Act 1988 (c.1)

- 38 (1) The Income and Corporation Taxes Act 1988 is amended as follows.
- [^{F271}(2) In section 180 (annual return of registered profit-related pay scheme), in subsection (3) for “section 242(3)” substitute “ section 244(3) ”.]
- (3) ^{F272}

Textual Amendments
F271 Sch. 10 para. 38(2) repealed (19.3.1997) by [1997 c. 16, ss. 61\(2\)\(3\), 113](#), [Sch. 18 Pt. VI\(3\)](#) (with effect as mentioned in the Notes 1 and 2 at the end of Pt. VI(3), Note 2 providing that the repeal does not affect the repealed provision in relation to profit periods beginning before 1.1.2000 or for certain other purposes in relation to any such periods)
F272 Sch. 10 para. 38(3) repealed (22.7.2004 with effect in accordance with [s. 77](#) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 326](#), [Sch. 42 Pt. 2\(7\)](#)

Dartford–Thurrock Crossing Act 1988 (c.20)

- 39 In section 33 of the Dartford–Thurrock Crossing Act 1988 (duty to lay before Parliament copies of accounts of persons appointed to levy tolls), for subsection (2) substitute—

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

“(2) In relation to a company “accounts” in subsection (1) means the company’s annual accounts for a financial year, together with the relevant directors’ report and the auditors’ report on those accounts.

Expressions used in this subsection have the same meaning as in Part VII of the Companies Act 1985.”.

F273F273 SCHEDULE 11

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Textual Amendments

F273 Sch. 11 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

F277F277 SCHEDULE 12

.....

Textual Amendments

F277 Sch. 12 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

F278F278 SCHEDULE 13

.....

Textual Amendments

F278 Sch. 13 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 42)

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F284}SCHEDULE 14

Section 47(1).

SUPERVISORY AND QUALIFYING BODIES: RESTRICTIVE PRACTICES

Textual Amendments

F284 Sch. 14 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, [Sch. 2 para. 2\(2\)](#) (with reg. 6(2))

PART I

PREVENTION OF RESTRICTIVE PRACTICES

Refusal of recognition on grounds related to competition

- 1 (1) The Secretary of State shall before deciding whether to make a recognition order in respect of a supervisory body or professional qualification send to [^{F285}the Office of Fair Trading (in this Schedule referred to as “the OFT”)] a copy of the rules and of any guidance which the Secretary of State is required to consider in making that decision together with such other information as the Secretary of State considers will assist the [^{F285}OFT].
- (2) The [^{F286}OFT] shall consider whether the rules or guidance have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, and shall report to the Secretary of State; and the Secretary of State shall have regard to [^{F286}its] report in deciding whether to make a recognition order.
- (3) The Secretary of State shall not make a recognition order if it appears to him that the rules and any guidance of which copies are furnished with the application have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, unless it appears to him that the effect is reasonably justifiable having regard to the purposes of this Part of this Act.

Textual Amendments

F285 Words in Sch. 14 para. 1(1) substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25 para. 21\(4\)\(a\)\(i\); S.I. 2003/766, art. 2, Sch.](#) (with transitional and transitory provision in [art. 3](#))

F286 Words in Sch. 14 para. 1(2) substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25 para. 21\(4\)\(a\)\(ii\); S.I. 2003/766, art. 2, Sch.](#) (with transitional and transitory provision in [art. 3](#))

Notification of changes to rules or guidance

- 2 (1) Where a recognised supervisory or qualifying body amends, revokes or adds to its rules or guidance in a manner which may reasonably be regarded as likely—
- to restrict, distort or prevent competition to any significant extent, or
 - otherwise to affect the question whether the recognition order granted to the body should continue in force,

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it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition.

- (2) Notice need not be given under sub-paragraph (1) of the revocation of guidance not intended to have continuing effect or issued otherwise than in writing or other legible form, or of any amendment or addition to guidance which does not result in or consist of guidance which is intended to have continuing effect and is issued in writing or other legible form.

Continuing scrutiny by the Director General of Fair Trading

- 3 (1) The [F287OFT] shall keep under review the rules made or guidance issued by a recognised supervisory or qualifying body, and if [F288it] is of the opinion that any rules or guidance of such a body have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, [F288it] shall report [F288its] opinion to the Secretary of State, stating what in [F288its] opinion the effect is or is likely to be.
- (2) The Secretary of State shall send to the [F287OFT] copies of any notice received by him under paragraph 2, together with such other information as he considers will assist the [F287OFT].
- (3) The [F287OFT] may report to the Secretary of State [F289its] opinion that any matter mentioned in such a notice does not have, and is not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition.
- (4) The [F287OFT] may from time to time consider whether—
- (a) any practices of a recognised supervisory or qualifying body in its capacity as such, or
 - (b) any relevant practices required or contemplated by the rules or guidance of such a body or otherwise attributable to its conduct in its capacity as such, have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and, if so, what that effect is or is likely to be; and if [F290it] is of that opinion [F290it] shall make a report to the Secretary of State stating [F290its] opinion and what the effect is or is likely to be.
- (5) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised supervisory body are practices engaged in for the purposes of, or in connection with, appointment as a company auditor or the conduct of company audit work by persons who—
- (a) are eligible under its rules for appointment as a company auditor, or
 - (b) hold an appropriate qualification and are directors or other officers of bodies corporate which are so eligible or partners in, or employees of, partnerships which are so eligible.
- (6) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised qualifying body are—
- (a) practices engaged in by persons in the course of seeking to obtain a recognised professional qualification from that body, and
 - (b) practices engaged in by persons approved by the body for the purposes of giving practical training to persons seeking such a qualification and which relate to such training.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.
Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F287 Words in Sch. 14 para. 3 substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(b)(i); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

F288 Words in Sch. 14 para. 3(1) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(b)(ii); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

F289 Word in Sch. 14 para. 3(3) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(b)(iii); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

F290 Words in Sch. 14 para. 3(4) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(b)(iv); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Investigatory powers of the Director

- 4 (1) The following powers are exercisable by the [F291OFT] for the purpose of investigating any matter in connection with [F292:its] functions under paragraph 1 or 3.
- (2) The [F291OFT] may by a notice in writing require any person to produce, at a time and place specified in the notice, to the [F291OFT] or to any person appointed by [F293:it] for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation.
- (3) The [F291OFT] may by a notice in writing require any person to furnish to the [F291OFT] such information as may be specified or described in the notice, and specify the time within which and the manner and form in which any such information is to be furnished.
- (4) A person shall not under this paragraph be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on the grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.
- (5) F294

Textual Amendments

F291 Words in Sch. 14 para. 4 substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(c)(i); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

F292 Word in Sch. 14 para. 4(1) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(c)(ii); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

F293 Word in Sch. 14 para. 4(2) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(c)(iii); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

F294 Sch. 14 para. 4(5) repealed (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(c)(iv), Sch. 26; S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Enforcement

- [F2954A(1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under paragraph 4.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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- (2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.
 - (3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
 - (4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 4.
 - (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
 - (6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.
- [Where the defaulter is a partnership constituted under the law of Scotland, the court^{F296}(6A) may punish any partner of the defaulter as it would have been able to punish him had he been guilty of contempt of court.]
- (7) In this section “the court”—
 - (a) in relation to England and Wales, means the High Court, and
 - (b) in relation to Scotland, means the Court of Session.]

Textual Amendments

F295 Sch. 14 para. 4A inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(d); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

F296 Sch. 14 para. 4A(6A) inserted (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, Sch. para. 10(2)

- ^{F297}4B (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 4.
- (2) A person who commits an offence under sub-paragraph (1) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Textual Amendments

F297 Sch. 14 para. 4B inserted (1.4.2003) by 2002 c. 40, s. 278, Sch. 25 para. 21(4)(d); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Publication of Director's reports

- 5 (1) The [^{F298}OFT] may, if [^{F298}it] thinks fit, publish any report made by [^{F298}it] under paragraph 1 or 3.

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- (2) [^{F298}It] shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the supervisory or qualifying body concerned) the publication of which would or might in [^{F298}its] opinion seriously and prejudicially affect the interests of that person.

Textual Amendments

F298 Words in Sch. 14 para. 5 substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(e); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Powers exercisable by the Secretary of State in consequence of report

- 6 (1) The powers conferred by this section are exercisable by the Secretary of State if, having received and considered a report from the [^{F299}OFT] under paragraph 3(1) or (4), it appears to him that—
- (a) any rules made or guidance issued by a recognised supervisory or qualifying body, or
 - (b) any such practices as are mentioned in paragraph 3(4),
- have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is reasonably justifiable having regard to the purposes of this Part of this Act.
- (2) The powers are—
- (a) to revoke the recognition order granted to the body concerned,
 - (b) to direct it to take specified steps for the purpose of securing that the rules, guidance or practices in question do not have the effect mentioned in sub-paragraph (1), and
 - (c) to make alterations in the rules of the body for that purpose.
- (3) The provisions of paragraph 3(2) to (5), (7) and (9) of Schedule 11 or, as the case may be, Schedule 12 have effect in relation to the revocation of a recognition order under sub-paragraph (2)(a) above as they have effect in relation to the revocation of such an order under that Schedule.
- (4) Before the Secretary of State exercises the power conferred by sub-paragraph (2)(b) or (c) above he shall—
- (a) give written notice of his intention to do so to the body concerned and take such steps (whether by publication or otherwise) as he thinks appropriate for bringing the notice to the attention of any other person who in his opinion is likely to be affected by the exercise of the power, and
 - (b) have regard to any representation made within such time as he considers reasonable by the body or any such other person.
- (5) A notice under sub-paragraph (4) shall give particulars of the manner in which the Secretary of State proposes to exercise the power in question and state the reasons for which he proposes to act; and the statement of reasons may include matters contained in any report received by him under paragraph 4.

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Textual Amendments

F299 Word in Sch. 14 para. 6 substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(f); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Supplementary provisions

- 7 (1) A direction under paragraph 6 is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the^{M90}Court of Session Act 1988.
- (2) The fact that any rules made by a recognised supervisory or qualifying body have been altered by the Secretary of State, or pursuant to a direction of the Secretary of State, under paragraph 6 does not preclude their subsequent alteration or revocation by that body.
- (3) In determining for the purposes of this Part of this Schedule whether any guidance has, or is likely to have, any particular effect the Secretary of State and the^{F300}OFT may assume that the persons to whom it is addressed will act in conformity with it.

Textual Amendments

F300 Word in Sch. 14 para. 7 substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(f); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Marginal Citations

M90 1988 c. 36.

PART II

CONSEQUENTIAL EXEMPTIONS FROM COMPETITION LAW

Fair Trading Act 1973 (c. 41)

8 ^{F301}

Textual Amendments

F301 Sch. 14 para. 8 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(g), Sch. 26; S.I. 2003/1397, art. {2(1)}, Sch.

^{F302}*The Competition Act 1998*

Textual Amendments

F302 Sch. 14 para. 9 and cross-heading substituted (1.3.2000) by 1998 c. 41, s. 3(1)(b), Sch. 2 Pt. II para. 2(2) (with s. 73); S.I. 2000/344, art. 2, Sch.

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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- [^{F303}9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
- (a) rules of, or guidance issued by, the body; and
 - (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
- (a) a recognised supervisory or qualifying body, or
 - (b) any person mentioned in paragraph 3(5) or (6) above,
- to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.
- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b) above.
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) above are to continue to apply for a period of six months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
- (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
 - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,
- and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.]

Textual Amendments

F303 Sch. 14 para. 9 and cross-heading substituted (1.3.2000) by 1998 c. 41, s. 3(1)(b), **Sch. 2 Pt. II para. 2(2)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

Competition Act 1980 (c. 21)

^{F304}10

Textual Amendments

F304 Sch. 14 para. 10 repealed (1.3.2000) by S.I. 2000/311, art. 24(a)

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.
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VALID FROM 01/10/2009

SCHEDULE 15 **E+W+S**

Section 105.

CHARGES ON PROPERTY OF OVERSEA COMPANIES

The following provisions are inserted in Part XXIII of the ^{M91}Companies Act 1985—

Marginal Citations

M91 1985 c. 6.

“CHAPTER III

REGISTRATION OF CHARGES

Introductory provisions.

- 703A) The provisions of this Chapter have effect for securing the registration in Great Britain of charges on the property of a registered overseas company.
- (2) Section 395(2) and (3) (meaning of “charge” and “property”) have effect for the purposes of this Chapter.
- (3) A “registered overseas company”, in relation to England and Wales or Scotland, means an overseas company which
- [^{F305}(a) has duly delivered documents under paragraph 1 of Schedule 21A to the registrar for that part of Great Britain and has not subsequently given notice to him under section 695A(3) that it has closed the branch in respect of which the documents were registered, or
- (b) has duly delivered documents to the registrar for that part of Great Britain under section 691 and has not subsequently given notice to him under section 696(4) that it has ceased to have an established place of business in that part.]
- (4) References in this Chapter to the registrar shall be construed in accordance with section 703E below and references to registration, in relation to a charge, are to registration in the register kept by him under this Chapter.

Charges requiring registration.

- 703B) The charges requiring registration under this Chapter are those which if created by a company registered in Great Britain would require registration under Part XII of this Act.
- (2) Whether a charge is one requiring registration under this Chapter shall be determined—
- [^{F306}(a) in the case of a charge over property of a company at the date when it becomes a registered overseas company, as at that date,]

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

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- (b) in the case of a charge created by a registered overseas company, as at the date the charge is created, and
 - (c) in the case of a charge over property acquired by a registered overseas company, as at the date of the acquisition.
- (3) In the following provisions of this Chapter references to a charge are, unless the context otherwise requires, to a charge requiring registration under this Chapter.

Where a charge not otherwise requiring registration relates to property by virtue of which it requires to be registered and to other property, the references are to the charge so far as it relates to property of the former description.

The register.

- 703(1) The registrar shall keep for each registered overseas company a register, in such form as he thinks fit, of charges on property of the company.
- (2) The register shall consist of a file containing with respect to each such charge the particulars and other information delivered to the registrar under or by virtue of the following provisions of this Chapter.
 - (3) Section 397(3) to (5) (registrar's certificate as to date of delivery of particulars) applies in relation to the delivery of any particulars or other information under this Chapter.

Company's duty to deliver particulars of charges for registration.

- 703(1) If when an overseas company
- [^{F307}(a) delivers documents for registration under paragraph 1 of Schedule 21A—
 - (i) in respect of a branch in England and Wales, or
 - (ii) in respect of a branch in Scotland,
 for the first time since becoming a company to which section 690A applies, or
 - (b) delivers documents for registration under section 691,]
- any of its property is situated in Great Britain and subject to a charge, it is the company's duty at the same time to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.

- [^{F308}(1A) Subsection (1) above does not apply in relation to a charge if—
- (a) the particulars of it required to be delivered under that subsection have already been so delivered to the registrar to whom the documents mentioned in subsection (1) above are delivered, and
 - (b) the company has at all times since they were so delivered to him been a registered overseas company in relation to the part of Great Britain for which he is registrar.]
- (2) Where a registered overseas company—
- (a) creates a charge on property situated in Great Britain, or
 - (b) acquires property which is situated in Great Britain and subject to a charge,
- it is the company's duty to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration within 21 days after the date of the charge's creation or, as the case may be, the date of the acquisition.

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This subsection does not apply if the property subject to the charge is at the end of that period no longer situated in Great Britain.

- (3) Where the preceding subsections do not apply and property of a registered overseas company is for a continuous period of four months situated in Great Britain and subject to a charge, it is the company's duty before the end of that period to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.
- (4) Particulars of a charge required to be delivered under subsections (1), (2) or (3) may be delivered for registration by any person interested in the charge.
- (5) If a company fails to comply with subsection (1), (2) or (3), then, unless particulars of the charge have been delivered for registration by another person, the company and every officer of it who is in default is liable to a fine.
- (6) Section 398(2), (4) and (5) (recovery of fees paid in connection with registration, filing of particulars in register and sending of copy of particulars filed and note as to date) apply in relation to particulars delivered under this Chapter.

Registrar to whom particulars, &c. to be delivered.

- 703E) The particulars required to be delivered by section 703D(1) (charges over property of overseas company becoming registered in a part of Great Britain) shall be delivered to the registrar to whom the documents are delivered under ^{F309}paragraph 1 of Schedule 21A or, as the case may be, section 691.
- (2) The particulars required to be delivered by section 703D(2) or (3) (charges over property of registered overseas company) shall be delivered—
 - ^{F310}(a) where the company is a company to which section 690A applies—
 - (i) if it has registered a branch in one part of Great Britain but has not registered a branch in the other, to the registrar for the part in which it has registered a branch,
 - (ii) if it has registered a branch in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part, and
 - (iii) in any other case, to the registrars for both parts of Great Britain; and
 - (b) where the company is a company to which section 691 applies—
 - (i) if it is registered in one part of Great Britain and not in the other, to the registrar for the part in which it is registered,
 - (ii) if it is registered in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part, and
 - (iii) in any other case, to the registrar for both parts of Great Britain.]
 - (3) Other documents required or authorised by virtue of this Chapter to be delivered to the registrar shall be delivered to the registrar or registrars to whom particulars of the charge to which they relate have been, or ought to have been, delivered.
 - (4) ^{F311}If a company ceases to be a registered overseas company in relation to either part of Great Britain, charges over property of the company shall cease to be subject to the provisions of this Chapter, as regards registration in that part of Great Britain,

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as from the date on which the notice under section 695A(3) or, as the case may be, 696(3) is given.],

This is without prejudice to rights arising by reason of events occurring before that date.

Effect of failure to deliver particulars, late delivery and effect of errors and omissions.

703(F) The following provisions of Part XII—

- (a) section 399 (effect of failure to deliver particulars),
- (b) section 400 (late delivery of particulars), and
- (c) section 402 (effect of errors and omissions in particulars delivered),

apply, with the following modifications, in relation to a charge created by a registered overseas company of which particulars are required to be delivered under this Chapter.

- (2) Those provisions do not apply to a charge of which particulars are required to be delivered under section 703D(1) (charges existing when company delivers documents under section 691).
- (3) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the references to the period of 21 days after the charge's creation shall be construed as references to the period of four months referred to in that subsection.

Delivery of further particulars or memorandum.

703G Sections 401 and 403 (delivery of further particulars and memorandum of charge ceasing to affect company's property) apply in relation to a charge of which particulars have been delivered under this Chapter.

Further provisions with respect to voidness of charges.

703(H) The following provisions of Part XII apply in relation to the voidness of a charge by virtue of this Chapter—

- (a) section 404 (exclusion of voidness as against unregistered charges),
- (b) section 405 (restrictions on cases in which charge is void),
- (c) section 406 (effect of exercise of power of sale), and
- (d) section 407 (effect of voidness on obligation secured).

- (2) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the reference in section 404 to the period of 21 days after the charge's creation shall be construed as a reference to the period of four months referred to in that subsection.

Additional information to be registered.

703(I) Section 408 (particulars of taking up of issue of debentures) applies in relation to a charge of which particulars have been delivered under this Chapter.

- (2) Section 409 (notice of appointment of receiver or manager) applies in relation to the appointment of a receiver or manager of property of a registered overseas company.

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- (3) Regulations under section 410 (notice of crystallisation of floating charge, &c.) may apply in relation to a charge of which particulars have been delivered under this Chapter; but subject to such exceptions, adaptations and modifications as may be specified in the regulations.

Copies of instruments and register to be kept by company.

- 703J Sections 411 and 412 (copies of instruments and register to be kept by company) apply in relation to a registered overseas company and any charge over property of the company situated in Great Britain.
- (2) They apply to any charge, whether or not particulars are required to be delivered to the registrar.
- (3) In relation to such a company the references to the company's registered office shall be construed as references to its principal place of business in Great Britain.

Power to make further provision by regulations.

- 703K The Secretary of State may by regulations make further provision as to the application of the provisions of this Chapter, or the provisions of Part XII applied by this Chapter, in relation to charges of any description specified in the regulations.
- (2) The regulations may apply any provisions of regulations made under section 413 (power to make further provision with respect to application of Part XII) or make any provision which may be made under that section with respect to the application of provisions of Part XII.

Provisions as to situation of property.

- 703L The following provisions apply for determining for the purposes of this Chapter whether a vehicle which is the property of an overseas company is situated in Great Britain—
- (a) a ship, aircraft or hovercraft shall be regarded as situated in Great Britain if, and only if, it is registered in Great Britain;
- (b) any other description of vehicle shall be regarded as situated in Great Britain on a day if, and only if, at any time on that day the management of the vehicle is directed from a place of business of the company in Great Britain;
- and for the purposes of this Chapter a vehicle shall not be regarded as situated in one part of Great Britain only.
- (2) For the purposes of this Chapter as it applies to a charge on future property, the subject-matter of the charge shall be treated as situated in Great Britain unless it relates exclusively to property of a kind which cannot, after being acquired or coming into existence, be situated in Great Britain; and references to property situated in a part of Great Britain shall be similarly construed.

Other supplementary provisions.

- 703M The following provisions of Part XII apply for the purposes of this Chapter—
- (a) section 414 (construction of references to date of creation of charge),
- (b) section 415 (prescribed particulars and related expressions),

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- (c) section 416 (notice of matters disclosed on the register),
- (d) section 417 (power of court to dispense with signature),
- (e) section 418 (regulations) and
- (f) section 419 (minor definitions).

Index of defined expressions.

703N The following Table shows the provisions of this Chapter and Part XII defining or otherwise explaining expressions used in this Chapter (other than expressions used only in the same section)—

Textual Amendments

- F305** Sch. 15: words inserted in s. 703A(3) (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para.12.**
- F306** Sch. 15: s. 703B(2)(a) substituted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 13**
- F307** Sch. 15: words in s. 703D(1) substituted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 14(2)**
- F308** Sch. 15: s. 703D(1A) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 14(3)**
- F309** Sch. 15: words in s. 703E(1) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 15(2)**
- F310** Sch. 15: words in s. 703E(2) substituted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 15(3)**
- F311** Sch. 15: words in s. 703E(4) substituted (1.1.1993) by S.I. 1992/3179, reg. 4, **Sch. 3 para. 15(4)**

PROSPECTIVE

F312 SCHEDULE 16

Section 107.

AMENDMENTS CONSEQUENTIAL ON PART IV

Textual Amendments

- F312** Sch. 16 repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1300(2), **Sch. 16**; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2)

F312 *Land Charges Act 1972 (c. 61)*

F312₁

F312 *Companies Act 1985 (c. 6)*

F312_{1A}

F312₂

F312 *Insolvency Act 1986 (c. 45)*

F312₃

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^{F312} *Company Directors Disqualification Act 1986 (c. 46)*

^{F312}₄

SCHEDULE 17

Section 130(7).

COMPANY CONTRACTS, SEALS, &c.: FURTHER PROVISIONS

Execution of deeds abroad

- 1 (1) Section 38 of the ^{M92}Companies Act 1985 (execution of deeds abroad) is amended as follows.
- (2) ^{F313}
- (3) For subsection (2) (effect of deed executed by attorney) substitute—
- “(2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company’s common seal.”.

Textual Amendments

F313 Sch. 17 paras. 1(2), 2(4), 8, 10 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27; 68A:2; 76:2), s. 74(2), **Sch. 9**

Marginal Citations

M92 1985 c. 6.

Official seal for use abroad

- 2 (1) Section 39 of the Companies Act 1985 (power to have official seal for use abroad) is amended as follows.
- (2) In subsection (1), after “A company” insert “which has a common seal” and for “the common seal of the company” substitute “its common seal”.
- (3) For subsection (2) (effect of sealing with official seal) substitute—
- “(2) The official seal when duly affixed to a document has the same effect as the company’s common seal.”.
- (4) ^{F314}

Textual Amendments

F314 Sch. 17 paras. 1(2), 2(4), 8, 10 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27; 68A:2; 76:2), s. 74(2), **Sch. 9**

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Official seal for share certificates, &c.

- 3 (1) Section 40 of the ^{M93}Companies Act 1985 (official seal for share certificates, &c.) is amended as follows.
- (2) After “A company” insert “which has a common seal” and for “the company’s common seal” substitute “its common seal”.
- (3) At the end add—
- “The official seal when duly affixed to a document has the same effect as the company’s common seal.”.

Marginal Citations

M93 1985 c. 6.

Authentication of documents

- 4 ^{F315}

Textual Amendments

F315 Sch. 17 para. 4 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2006/3428, **art. 7(c)**, Sch. 4 Pt. 1

Share certificate as evidence of title

- 5 ^{F316}

Textual Amendments

F316 Sch. 17 para. 5 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

Share warrants to bearer

- 6 ^{F317}

Textual Amendments

F317 Sch. 17 para. 6 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

Identification of company on common seal

- 7 In section 350 of the ^{M94}Companies Act 1985 (identification of company on company seal), for subsection (1) substitute—

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“(1) A company which has a common seal shall have its name engraved in legible characters on the seal; and if it fails to comply with this subsection it is liable to a fine.”.

Marginal Citations

M94 1985 c. 6.

Floating charges under Scots law

8 F318

Textual Amendments

F318 Sch. 17 paras. 1(2), 2(4), 8, 10 repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 27; 68A:2; 76:2), s. 74(2), [Sch. 9](#)

9 In section 466(2) of the Companies Act 1985 (execution of instrument altering floating charge)—
(a) at the beginning of the subsection insert “Without prejudice to any enactment or rule of law regarding the execution of documents,”;
(b) omit paragraph (a);
(c) at the end of paragraph (b) insert “; or”, and
(d) omit paragraph (d) and the word “or” preceding it.

10 F319

Textual Amendments

F319 Sch. 17 paras. 1(2), 2(4), 8, 10 repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 27; 68A:2; 76:2), s. 74(2), [Sch. 9](#)

SCHEDULE 18

Section 144(4).

“SUBSIDIARY” AND RELATED EXPRESSIONS: CONSEQUENTIAL AMENDMENTS AND SAVINGS

Coal Industry Nationalisation Act 1946 (c. 59)

1 In Schedule 2A to the Coal Industry Nationalisation Act 1946 (eligibility for superannuation benefits), in the definition of “subsidiary” in paragraph 5 of the Table, for “section 154 of the Companies Act 1948” substitute “section 736 of the Companies Act 1985”.

Electricity Act 1947 (c. 54)

2 F320

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Textual Amendments

F320 Sch. 18 paras. 2, 11, 19, 26 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\), s. 1\(1\)](#), {Sch. 1 Pt. 17 Group 5}

Landlord and Tenant Act 1954 (c. 56)

3 **F321**

Textual Amendments

F321 Sch. 18 para. 3 repealed (E.W.) (1.6.2004) by [The Regulatory Reform \(Business Tenancies\) \(England and Wales\) Order 2003 \(S.I. 2003/3096\), art. 28\(2\), Sch. 6](#)

Transport Act 1962 (c. 46)

4 In the Transport Act 1946, in the definition of “subsidiary” in section 92(1) (interpretation) omit the words “(taking references in that section to a company as being references to a body corporate)”.

Harbours Act 1964 (c. 40)

5 In section 57(1) of the Harbours Act 1964 (interpretation), in the definition of “marine work” for “section 154 of the Companies Act 1948” substitute “section 736 of the Companies Act 1985”.

General Rate Act 1967 (c. 9)

6 In section 32A of the General Rate Act 1967 (rateable premises of Transport Boards), in the definition of “subsidiary” in subsection (6) omit the words “(taking references in that section to a company as being references to a body corporate)”.

Transport Act 1968 (c. 73)

F3227

Textual Amendments

F322 Sch. 18 para. 7 repealed (1.1.1996) by [1995 c. 23, s. 60\(2\), Sch. 8 Pt.I](#) (with ss. 54, 55); [S.I. 1995/2181, art.2](#)

Post Office Act 1969 (c. 48)

8 In section 86 of the Post Office Act 1969 (interpretation), in subsection (2) for “736(5)(b)” substitute “736”.

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Industry Act 1972 (c. 63)

- 9 In section 10 of the Industry Act 1972 (construction credits), in subsection (9) for “for the purposes of the Companies Act 1985 by section 736 of that Act” substitute “by section 736 of the Companies Act 1985”.

Coal Industry Act 1973 (c. 8)

- 10 ^{F323}

Textual Amendments

F323 Sch. 18 para. 10 repealed (27.3.2004) by 1994 c. 21, ss. 67, 68(3)(b)(c), Sch. 11 Pt. IV (with ss. 40(7), 66); S.I. 2004/144, art. 3

Industry Act 1975 (c. 68)

- 11 ^{F324}

Textual Amendments

F324 Sch. 18 paras. 2, 11, 19, 26 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

Scottish Development Agency Act 1975 (c. 69)

- [^{F325}12 In section 25(1) of the Scottish Development Agency Act 1975 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “section 736”.]

Textual Amendments

F325 Sch. 18 para. 12 repealed (1.4.1991) by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), Sch. 5 Part I

Welsh Development Agency Act 1975 (c. 70)

- 13 In section 27(1) of the Welsh Development Agency Act 1975 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “section 736”.

Restrictive Trade Practices Act 1976 (c. 41)

- ^{F326}14

Textual Amendments

F326 Sch. 18 para. 14 repealed (1.3.2000) by S.I. 2000/311, art. 24(b)

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Industrial Common Ownership Act 1976 (c. 78)

- 15 In section 2(5) of the Industrial Common Ownership Act 1976 (common ownership and co-operative enterprises) for “for the purposes of the Companies Act 1985” substitute “as defined by section 736 of the Companies Act 1985 or for the purposes of”.

Aircraft and Shipbuilding Industries Act 1977 (c. 3)

- 16 In section 56(1) of the Aircraft and Shipbuilding Industries Act 1977 (interpretation), in the definition of “subsidiary” for “the same meaning as in” substitute “the meaning given by section 736 of”.

Nuclear Industry (Finance) Act 1977 (c. 7)

- 17 In section 3 of the Nuclear Industry (Finance) Act 1977 (expenditure on acquisition of shares in National Nuclear Corporation Ltd and subsidiaries), after “within the meaning of” insert “section 736 of”.

Coal Industry Act 1977 (c. 39)

- 18 ^{F327}

Textual Amendments

F327 Sch. 18 para. 18 repealed (27.3.2004) by 1994 c. 21, ss. 67, 68, Sch. 11 Pt.III (with ss. 40(7), 66); S.I. 2004/144, art. 2, Sch.

Shipbuilding (Redundancy Payments) Act 1978 (c. 11)

- 19 ^{F328}

Textual Amendments

F328 Sch. 18 paras. 2, 11, 19, 26 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

Capital Gains Tax Act 1979 (c. 14)

- ^{F329}20

Textual Amendments

F329 Sch. 18 para. 20 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch.12 (with s. 201(3), Sch. 11 paras. 20, 22, 26(2), 27)

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Crown Agents Act 1979 (c. 43)

- 21 In section 31(1) of the Crown Agents Act 1979 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “ section 736(2) ”.

Competition Act 1980 (c. 21)

- 22 In sections 11(3)(f) and 12 of the Competition Act 1980 (references relating to public bodies, &c.), after “within the meaning of” insert “ section 736 of ”.

British Aerospace Act 1980 (c. 26)

- 23 In section 14(1) of the British Aerospace Act 1980 (interpretation)—
- (a) in the definition of “subsidiary” for “the same meaning as in the Companies Act 1948”, and
 - (b) in the definition of “wholly-owned subsidiary” for “the same meaning as it has for the purposes of section 150 of the Companies Act 1948”,
- substitute “ the meaning given by section 736 of the Companies Act 1985 ”.

Local Government, Planning and Land Act 1980 (c. 65)

- 24 In sections 100(1), 141(7) and 170(1)(d) and (2) of the Local Government, Planning and Land Act 1980 (which refer to wholly-owned subsidiaries) for “within the meaning of section 736(5)(b)” substitute “ as defined by section 736 ”.

British Telecommunications Act 1981 (c. 38)

- 25 In section 85 of the British Telecommunications Act 1981 (interpretation), for subsection (2) substitute—
- “(2) Any reference in this Act to a subsidiary or wholly-owned subsidiary shall be construed in accordance with section 736 of the Companies Act 1985.”.

Transport Act 1981 (c. 56)

- 26 ^{F330}

Textual Amendments

F330 Sch. 18 paras. 2, 11, 19, 26 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), **s. 1(1)**, {Sch. 1 Pt. 17 Group 5}

Value Added Tax Act 1983 (c. 55)

- ^{F331}27

Textual Amendments

F331 Sch. 18 para. 27 repealed (1.9.1994) by [1994 c. 23](#), **ss. 100(2), 101(1)**, **Sch.15** (with [Sch. 13 para. 2](#))

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Telecommunications Act 1984 (c. 12)

- [^{F332}28 In section 73(1) of the Telecommunications Act 1984 (interpretation of Part V), for “the same meaning as in” substitute “the meaning given by section 736 of”.]

Textual Amendments

F332 Sch. 18 para. 28 repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 406(7), 408, 411, [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/1900, art. 1(2), [2\(1\)](#), 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, [art. 3\(2\)](#) (with art. 11)

London Regional Transport Act 1984 (c. 32)

- 29 In section 68 of the London Regional Transport Act 1984 (interpretation), for the definition of “subsidiary” substitute—

““subsidiary” (subject to section 62 of this Act) has the meaning given by section 736 of the Companies Act 1985;”.

Inheritance Tax Act 1984 (c. 51)

- 30 (1) The Inheritance Tax Act 1984 is amended as follows.
- (2) In section 13 (dispositions by close companies for benefit of employees), in the definition of “subsidiary” in subsection (5) for “the same meaning as in” substitute “ the meaning given by section 736 of ”.
- (3) In section 103 (introductory provisions relating to relief for business property), in subsection (2) for “the same meanings as in” substitute “ the meanings given by section 736 of ”.
- (4) In section 234 (interest on instalments) in subsection (3) for “within the meaning of” substitute “ as defined in section 736 of ”.

Ordnance Factories and Military Services Act 1984 (c. 59)

- 31 In section 14 of the Ordnance Factories and Military Services Act 1984 (interpretation), for the definitions of “subsidiary” and “wholly-owned subsidiary” substitute—

““subsidiary” and “wholly-owned subsidiary” have the meanings given by section 736 of the Companies Act 1985.”.

Companies Act 1985 (c. 6)

- 32 (1) The following provisions have effect with respect to the operation of section 23 of the Companies Act 1985 (prohibition on subsidiary being a member of its holding company).
- (2) In relation to times, circumstances and purposes before the commencement of section 144(1) of this Act, the references in section 23 to a subsidiary or holding company shall be construed in accordance with section 736 of the Companies Act 1985 as originally enacted.

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- (3) Where a body corporate becomes or ceases to be a subsidiary of a holding company by reason of section 144(1) coming into force, the prohibition in section 23 of the Companies Act 1985 shall apply (in the absence of exempting circumstances), or cease to apply, accordingly.
- 33 (1) Section 153 of the Companies Act 1985 (transactions excepted from prohibition on company giving financial assistance for acquisition of its own shares) is amended as follows.
- (2) In subsection (4)(bb) (employees’ share schemes) for “a company connected with it” substitute “a company in the same group”.
- (3) For subsection (5) substitute—
- “(5) For the purposes of subsection (4)(bb) a company is in the same group as another company if it is a holding company or subsidiary of that company, or a subsidiary of a holding company of that company.”.

34 F333

Textual Amendments

F333 Sch. 18 para. 34 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194. {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

35 F334

Textual Amendments

F334 Sch. 18 para. 35 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194. {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

36 F335

Textual Amendments

F335 Sch. 18 para. 36 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194. {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

37 For the purposes of section 743 of the Companies Act 1985 (meaning of “employees’ share scheme”), a company which immediately before the commencement of section 144(1) was a subsidiary of another company shall not be treated as ceasing to be such a subsidiary by reason of that subsection coming into force.

38 In Schedule 25 to the Companies Act 1985 “subsidiary” has the meaning given by section 736 of that Act as originally enacted.

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Transport Act 1985 (c. 67)

- 39 In section 137(1) of the Transport Act 1985 (interpretation), in the definition of “subsidiary” for the words from “as defined” to the end substitute “ within the meaning of section 736 of the Companies Act 1985 as originally enacted (and not as substituted by section 144(1) of the Companies Act 1989); ”.

Housing Act 1985 (c. 68)

- 40 In section 622 of the Housing Act 1985 (minor definitions: general), in the definition of “subsidiary” for “the same meaning as in” substitute “ the meaning given by section 736 of ”.

Housing Associations Act 1985 (c. 69)

- 41 In section 101 of the Housing Associations Act 1985 (minor definitions: Part II), in the definition of “subsidiary” for “the same meaning as in” substitute “ the meaning given by section 736 of ”.

Atomic Energy Authority Act 1986 (c. 3)

- 42 In section 9 of the Atomic Energy Authority Act 1986 (interpretation), in the definition of “subsidiary” and “wholly-owned subsidiary” for “have the same meaning as in” substitute “ have the meaning given by section 736 of ”.

Airports Act 1986 (c. 31)

- 43 In section 82 of the Airports Act 1986 (general interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

Gas Act 1986 (c. 44)

- 44 In the Gas Act 1986—
- (a) in section 48(1) (interpretation of Part I), in the definitions of “holding company” and “subsidiary”, and
 - (b) in section 61(1) (interpretation of Part II), in the definition of “subsidiary”, for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

Building Societies Act 1986 (c. 53)

- 45 In section 119 of the Building Societies Act 1986 (interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

Income and Corporation Taxes Act 1988 (c. 1)

- 46 F336

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Textual Amendments

F336 Sch. 18 para. 46 repealed (6.4.2003 with effect as mentioned in s. 723(1)(a)(b) of the amending Act (subject to Sch. 7)) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), ss. 723(1), 724, **Sch. 8 Pt. 1**

British Steel Act 1988 (c. 35)

- 47 In section 15(1) of the British Steel Act 1988 (interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “ has the meaning given by section 736 of”.

SCHEDULE 19

Section 145.

MINOR AMENDMENTS OF THE COMPANIES ACT 1985

Correction of cross-reference

- 1 In section 131(1) of the ^{M95}Companies Act 1985 (merger relief) for “section 132(4)” substitute “section 132(8)”.

This amendment shall be deemed always to have had effect.

Marginal Citations

M95 1985 c. 6.

Particulars to be given of directors and secretaries

- 2 (1) Section 289 of the Companies Act 1985 (particulars of directors required to be entered in register) is amended as follows.
- (2) In subsection (1)(a) (particulars of individual directors)—
- (a) in sub-paragraph (i) for “Christian name and surname” and in sub-paragraph (ii) for “Christian name or surname” substitute “name”, and
 - (b) for sub-paragraph (vii) substitute—
“(vii) the date of his birth;”.
- (3) In subsection (1)(b) (particulars of other directors) after “corporation” insert “or Scottish firm” and after “corporate” insert “or firm”.
- (4) For subsection (2) substitute—
- “(2) In subsection (1)(a)—
- (a) “name” means a person’s Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and
 - (b) the reference to a former name does not include—

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- (i) in the case of a peer, or an individual normally known by a British title, 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 name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
 - (iii) in the case of a married woman, the name by which she was known previous to the marriage.”.

- 3 (1) Section 290 of the Companies Act 1985 (particulars of secretaries to be entered in register) is amended as follows.
 - (2) In subsection (1)(a) (particulars of individuals) for “Christian name and surname” and “Christian name or surname” substitute “name”.
 - (3) For subsection (3) substitute—
 - “(3) Section 289(2)(a) and (b) apply for the purposes of the obligation under subsection (1)(a) of this section to state the name or former name of an individual.”.

- 4 (1) Section 305 of the Companies Act 1985 (directors’ names on company correspondence, &c.) is amended as follows.
 - (2) In subsection (1) for the words from “the Christian name” onwards substitute “the name of every director of the company”.
 - (3) For subsection (4) substitute—
 - “(4) For the purposes of the obligation under subsection (1) to state the name of every director of the company, a person’s “name” means—
 - (a) in the case of an individual, his Christian name (or other forename) and surname; and
 - (b) in the case of a corporation or Scottish firm, its corporate or firm name.
 - (5) The initial or a recognised abbreviation of a person’s Christian name or other forename may be stated instead of the full Christian name or other forename.
 - (6) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
 - (7) In this section “director” includes a shadow director and the reference in subsection (3) to an “officer” shall be construed accordingly.”.

- 5 (1) Section 686 of the ^{M96}Companies Act 1985 (documents to be delivered to registrar on registration of company not formed under companies legislation) is amended as follows.
 - (2) In subsection (1) (particulars to be delivered to registrar), for paragraph (b) (particulars of directors and managers) substitute—
 - “(b) a list showing with respect to each director or manager of the company—
 - (i) in the case of an individual, his name, address, occupation and date of birth,

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(ii) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.”.

(3) After that subsection insert—

“(1A) For the purposes of subsection (1)(b)(i) a person’s “name” means his Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.”.

Marginal Citations

M96 1985 c. 6.

6 In section 691 of the Companies Act 1985 (documents to be delivered to registrar on registration of oversea company), for subsection (2) (particulars of directors and secretary) substitute—

“(2) The list referred to in subsection (1)(b)(i) shall contain the following particulars with respect to each director—

(a) in the case of an individual—

- (i) his name,
- (ii) any former name,
- (iii) his usual residential address,
- (iv) his nationality,
- (v) his business occupation (if any),
- (vi) if he has no business occupation but holds other directorships, particulars of them, and
- (vii) his date of birth;

(b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

(3) The list referred to in subsection (1)(b)(i) 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 name, any former name and his usual residential address;
- (b) in the case of a corporation or 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 required by paragraph (a).

(4) In subsections (2)(a) and (3)(a) above—

- (a) “name” means a person’s Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and
- (b) the reference to a former name does not include—

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- (i) in the case of a peer, or an individual normally known by a British title, 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 name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
 - (iii) in the case of a married woman, the name by which she was known previous to the marriage.”.
- 7 (1) Schedule 1 to the Companies Act 1985 (particulars of directors and secretaries to be sent to registrar) is amended as follows.
- (2) In paragraph 1(a) (particulars of individual directors)—
- (a) for “Christian name and surname” and “Christian name or surname” substitute “name”; and
 - (b) for the words from “and, in the case” to the end substitute “and his date of birth”.
- (3) In paragraph 1(b) (particulars of other directors) after “corporation” insert “or Scottish firm” and after “corporate” insert “or firm”.
- (4) In paragraph 3(1)(a) (particulars of individual secretaries) for “Christian name and surname” (twice) substitute “name”.
- (5) For paragraph 4 substitute—
- “4 In paragraphs 1(a) and 3(1)(a) above—
- (a) “name” means a person’s Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them; and
 - (b) the reference to a former name does not include—
 - (i) in the case of a peer, or an individual normally known by a British title, 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 name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
 - (iii) in the case of a married woman, the name by which she was known previous to the marriage.”.

Transactions with directors not requiring authorisation

8

F337

Textual Amendments

F337 Sch. 19 para. 8 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194, {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

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Time limit for holding extraordinary general meeting convened on members' requisition

9 F338

Textual Amendments

F338 Sch. 19 para. 9 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7))) and subject to Sch. 1)

Removal of restriction on transfer of shares

- 10 (1) In section 456(3) of the Companies Act 1985 (removal of restrictions by order of court), in paragraph (b) (order where shares to be sold)—
- (a) for “sold” substitute “ transferred for valuable consideration ”, and
 - (b) for “sale” substitute “ transfer ”.
- (2) In section 454(2) and (3) (which refer to section 456(3)(b)) for “sell” and “sale” substitute “ transfer ”.

VALID FROM 01/10/2009

Protection of company's members against unfair prejudice

PROSPECTIVE

F339 11

Textual Amendments

F339 Sch. 19 paras. 11-16 repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, Sch.)

Requirements for registration by joint stock companies

- 12 In section 684(1) of the Companies Act 1985 (requirements for registration by joint stock companies: documents to be delivered to registrar), in paragraph (b) (list of members on specified day) for “(not more than 6 clear days before the day of registration)” substitute “(not more than 28 clear days before the day of registration)”.

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VALID FROM 01/10/2009

Delivery of documents by oversea companies

PROSPECTIVE

F339¹³

Textual Amendments

F339 Sch. 19 paras. 11-16 repealed (1.10.2009) by [Companies Act 2006 \(c. 46\)](#), s. 1300(2), [Sch. 16](#); [S.I. 2008/2860](#), art. 4, [Sch. 1 Pt. 1](#) (with arts. 7, 8, [Sch. 2](#)) (which transitional provisions in [Sch. 2](#) are amended (1.10.2009) by [S.I. 2009/2476](#), arts. 1(3), 2(3)(4) and by [S.I. 2009/1802](#), arts. 1, 18, [Sch.](#))

Companies' registered numbers

14 For section 705 of the Companies Act 1985 (Companies' registered numbers) substitute—

“705 Companies' registered numbers.

- (1) The registrar shall allocate to every company a number, which shall be known as the company's registered number.
- (2) Companies' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.
- (3) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.
- (4) A change of a company's registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the registrar the requirement of section 351(1)(a) as to the use of the company's registered number on business letters and order forms is satisfied by the use of either the old number or the new.
- (5) In this section “company” includes—
 - (a) any oversea company which has complied with section 691 (delivery of statutes to registrar, &c.), other than a company which appears to the registrar not to have a place of business in Great Britain; and
 - (b) any body to which any provision of this Act applies by virtue of section 718 (unregistered companies).”.

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Exemptions from limit of 20 on members of partnership

- 15 (1) Section 716 of the Companies Act ^{M97}1985 (prohibition of formation of company, association or partnership with more than 20 members unless registered as company, &c.) is amended as follows.
- (2) In subsection (2) (exemptions), after paragraph (c) insert—
- “(d) for any purpose prescribed by regulations (which may include a purpose mentioned above), of a partnership of a description so prescribed.”; and omit the words inserted by paragraph 22 of Schedule 16 to the Financial Services Act ^{M98}1986.
- (3) For subsections (3) and (4) substitute—
- “(3) In subsection (2)(a) “solicitor”—
- (a) in relation to England and Wales, means solicitor of the Supreme Court, and
- (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.
- (4) In subsection (2)(c) “recognised stock exchange” means—
- (a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and
- (b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by statutory instrument.”.

Marginal Citations

M97 1985 c. 6.

M98 1986 c. 60.

- 16 (1) Section 717 of the Companies Act 1985 (limited partnerships: limit on number of members) is amended as follows.
- (2) In subsection (1) (exemptions from limit of 20 members under section 4(2) of Limited Partnerships Act 1907), after paragraph (c) insert—
- “(d) to a partnership carrying on business of any description prescribed by regulations (which may include a business of any description mentioned above), of a partnership of a description so prescribed.”; and omit the words inserted by paragraph 22 of Schedule 16 to the Financial Services Act 1986.
- (3) For subsections (2) and (3) substitute—
- “(2) In subsection (1)(a) “solicitor”—
- (a) in relation to England and Wales, means solicitor of the Supreme Court, and
- (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.
- (3) In subsection (1)(c) “recognised stock exchange” means—

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- (a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and
- (b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by Statutory Instrument.”.

Meaning of “officer who is in default”

17 F340

Textual Amendments

F340 Sch. 19 para. 17 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194, {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7))) and subject to Sch. 1)

Offences committed by partnerships and other unincorporated bodies

18 F341

Textual Amendments

F341 Sch. 19 para. 18 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

Meaning of “office copy” in Scotland

19 In Part XXVI of the Companies Act 1985 (interpretation), after section 743 insert—

“743A Meaning of “office copy” in Scotland.

References in this Act to an office copy of a court order shall be construed, as respects Scotland, as references to a certified copy interlocutor.”.

Index of defined expressions

20 In Part XXVI of the Companies Act 1985 (interpretation), after section 744 insert—

“744A Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions for the purposes of this Act generally—

Commencement Information

I48 Sch. 19 para. 20 wholly in force at 3.7.1995 by S.I. 1995/1352, art. 3(b)

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Fraudulent trading by unregistered companies

21 In Schedule 22 to the Companies Act^{M99} 1985 (provisions applying to unregistered companies), at the appropriate place insert—

“Part XVI
Fraudulent trading by a
company.”.

Marginal Citations

M99 1985 c. 6.

SCHEDULE 20

section 153.

AMENDMENTS ABOUT MERGERS AND RELATED MATTERS

Fair Trading Act 1973 (c. 41)

1 **F342**

Textual Amendments

F342 Sch. 20 paras. 1, 20 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\), s. 1\(1\)](#), {Sch. 1 Pt. 17 Group 5}

2 **F343**

Textual Amendments

F343 Sch. 20 para. 2 repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406\(7\), 411, Sch. 19\(1\)](#), (with transitional provisions in Sch. 18); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with art. 11) and Sch. 20 para. 2(2) expressed to be repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\), s. 1\(1\)](#), {Sch. 1 Pt. 17 Group 5}

3 **F344**

Textual Amendments

F344 Sch. 20 para. 3 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by [2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2\(1\)}, 3\(1\), Sch.; S.I. 2004/3233, art. 2, Sch.](#) (with arts. 3-5)

4 **F345**

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Textual Amendments

F345 Sch. 20 para. 4 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

5 **F346**

Textual Amendments

F346 Sch. 20 para. 5 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

6 **F347**

Textual Amendments

F347 Sch. 20 para. 6 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

7 **F348**

Textual Amendments

F348 Sch. 20 para. 7 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

8 **F349**

Textual Amendments

F349 Sch. 20 para. 8 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

9 **F350**

Textual Amendments

F350 Sch. 20 para. 9 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

10 **F351**

Textual Amendments

F351 Sch. 20 para. 10 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

11 **F352**

Status: Point in time view as at 21/02/2009. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 29 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F352 Sch. 20 para. 11 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

12 F353

Textual Amendments

F353 Sch. 20 para. 12 repealed (29.12.2003) by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, Sch. para. 4(2) (with art. 3)

13 (1) F354

(2) F355

Textual Amendments

F354 Sch. 20 para. 13(1) repealed (29.12.2003) by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, Sch. para. 4(2) (with art. 3)

F355 Sch. 20 para. 13(2) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

14 F356

Textual Amendments

F356 Sch. 20 para. 14 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

15 F357

Textual Amendments

F357 Sch. 20 para. 15 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

16 F358

Textual Amendments

F358 Sch. 20 para. 16 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

17 In section 132(1) of that Act, after “85(6)” there is inserted “ section 93B ”.

18 (1) In Schedule 3 to that Act, in paragraph 16(2) for “75” there is substituted “ “73 ”.

(2) This paragraph does not apply in relation to any report made before the passing of this Act.

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19 F359

Textual Amendments
F359 Sch. 20 para. 19 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

20 F360

Textual Amendments
F360 Sch. 20 paras. 1, 20 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

Competition Act 1980 (c. 21)

F361²¹

Textual Amendments
F361 Sch. 20 paras. 21-24 repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 13, Sch. 14 Pt.I; S.I. 2000/344, art. 2, Sch.

F362²²

Textual Amendments
F362 Sch. 20 paras. 21-24 repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 13, Sch. 14 Pt.I; S.I. 2000/344, art. 2, Sch.

F363²³

Textual Amendments
F363 Sch. 20 paras. 21-24 repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 13, Sch. 14 Pt.I; S.I. 2000/344, art. 2, Sch.

F364²⁴

Textual Amendments
F364 Sch. 20 paras. 21-24 repealed (1.3.2000) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 13, Sch. 14 Pt.I; S.I. 2000/344, art. 2, Sch.

Telecommunications Act 1984 (c. 12)

25 (1) In section 13(9) of the Telecommunications Act 1984, after “Commission)” there is inserted “ together with section 24 of the Competition Act 1980 (modification of provisions about performance of Commission’s functions) ”.

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(2) The Monopolies and Mergers Commission (Performance of Functions) Order 1989 shall have effect as if sub-paragraph (1) above had come into force immediately before the making of the Order.

Financial Services Act 1986 (c. 60)

F365 26

Textual Amendments

F365 Sch. 20 para. 26 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(o)

F366 SCHEDULE 21

Textual Amendments

F366 Sch. 21 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(p)

F370 SCHEDULE 22

Textual Amendments

F370 Sch. 22 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(q)

F371 SCHEDULE 23

Textual Amendments

F371 Sch. 23 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(r)

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SCHEDULE 24

Section 212.

REPEALS

Modifications etc. (not altering text)

C46 Sch. 24 restricted by [S.I. 1990/354](#), [art. 6\(4\)](#)

Commencement Information

I79 Sch. 24 partly in force: Sch. 24 in force for certain purposes at 1.7.1991 by s. 215(2) and [S.I. 1991/488](#), [art. 2\(4\)](#); Sch. 24 partly in force for certain purposes at 1.10.1991 and 1.11.1991 see s. 215 and [S.I. 1991/1996](#), [art. 2\(1\)\(2\)](#); Sch. 24 in force for certain purposes at 3.7.1995 see s. 215 and [S.I. 1995/1352](#), [art. 3\(c\)\(i\)\(ii\)](#)

Chapter	Short title	Extent of repeal
1964 c. 40.	Harbours Act 1964.	In section 42(6), the words “required to be attached to a company’s balance sheet”.
1973 c. 41.	Fair Trading Act 1973.	Section 46(3). In section 71, in subsection (1) the words “made under section 69(4) of this Act” and subsection (2). In section 74(1), the words from “and does not” to “section 69(4) of this Act”. In section 85, subsection (5) and, in subsection (6), paragraph (b) and the word “or” preceding it. In section 88(6), the words from “the relevant parties” to the “and” immediately following paragraph (c). In section 89(2), the words “Part II of”. In Schedule 9, in paragraph 4 the words from “either” to the end.
1985 c. 6.	Companies Act 1985.	Section 160(3).
1985 c. 6— <i>cont.</i>	Companies Act 1985— <i>cont.</i>	In section 169(5), the words from “, during business hours” to “for inspection”). In section 175(6)(b), the words from “during business hours” to “period”.

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In section 191—

(a) in subsection (1), the words from “(but” to “for inspection”;

(b) in subsection (3), paragraphs (a) and (b).

Section 201.

In section 202(1), the words “(except where section 201(3) applies)”.

Section 209(1)(j).

In section 219(1), the words from “during” to “for inspection”.

In section 288(3), the words from “during” to “for inspection”.

In section 318(7), the words from “during” to “for inspection”.

In section 356—

(a) in subsection (1), the words “during business hours”;

(b) subsections (2) and (4).

In section 383—

(a) in subsection (1), the words “during business hours”;

(b) subsection (2);

(c) in subsection (3), the words from “at a charge” to the end.

Section 389.

Section 435.

Section 440.

Section 443(4).

In section 446—

(a) in subsection (3), paragraph (b) and the word “and” preceding it;

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		(b) subsection (7).
		Section 447(1).
		In section 449(1)—
		(a) the words “or 448”;
		(b) paragraph (e).
		Section 452(1)(b).
		In section 460(1), the words “(inspection of company’s books and papers)” and “under section 440”.
1985 c. 6— <i>cont.</i>	Companies Act 1985— <i>cont.</i>	In section 464(5), at the end of paragraph (c), the word “and”.
		In section 466—
		(a) in subsection (2), paragraph (a) and (d) and the word “or” preceding the latter;
		(b) subsections (4) and (5);
		(c) in subsection (6), the words “falling under subsection (4) of this section”.
		In section 651(1), the words “at any time within 2 years of the date of the dissolution”.
		In section 708(1)(b), the words “or other material”.
		Sections 712 and 715.
		In section 716(2), the words following paragraph (c).
		In section 717(1), the words following paragraph (c).
		In section 733(3), the words from “then” to “216(3)”.
		In section 735A(1), the words “440, 449(1)(a) and (d)”.
		In section 744, the definitions of “annual return”, “authorised institution”, “authorised minimum”, “expert”, “floating charge”,

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1985 c. 6—*cont.*

Companies Act 1985—*cont.*

“joint stock company” and
“undistributable reserves”.

In section 746, the words
“Except as provided by
section 243(6),”.

In Schedule 2—

(a) in paragraph 1(1), the
words “paragraph 60(2) of
Schedule 4 or paragraph
19(3) of Schedule 9”;

(b) paragraph 1(5);

(c) in paragraph 2(1), the
word “23,”;

(d) paragraph 2(2);

(e) in paragraph 3(1), the
words “paragraph 60(2) of
Schedule 4 or paragraph
19(3) of Schedule 9”;

(f) paragraph 3(3);

(g) in paragraph 4(1), the
words “(whether as personal
representative or otherwise)”;

(h) in paragraph 4(2), the
words “paragraph 60(2) of
Schedule 4 or paragraph
19(3) of Schedule 9”.

In Schedule 4, paragraphs
50(6), 53(7), 60 to 70, 74, 75,
77 to 81, 87, 90 to 92 and 95.

In Schedule 9—

(a) paragraphs 1, 13(3) and
(18), 16, 18(5), 19(3) to (7)
and 21 to 26;

(b) in paragraph 27(4), the
words “of the said Part I”;

(c) in paragraph 28, in sub-
paragraph (1) the words “to
which Part II of the Insurance
Companies Act 1982 applies”
and in sub-paragraph (2)
the words “of Part I of this
Schedule”;

(d) paragraphs 29 to 31.

In Schedule 11—

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		(a) paragraph 4(b) and (c);
		(b) paragraph 5(b).
		In Schedule 13, in paragraph 25, the words from “during” to “for inspection”.
		Schedule 15.
		In Schedule 22—
		(a) the entry relating to section 36(4);
		(b) in the entry relating to sections 363 to 365, the words “(with Schedule 15)”;
		(c) in the entry relating to sections 384 to 393, in column 2, the word “qualifications”.
		In Schedule 24, the entries relating to sections 245(1), 245(2), 255(5), 260(3), 287(3), 365(3), 384(5), 386(2), 389(10), 390(7), 391(4), 392(2) and 393.
1985 c. 65.	Insolvency Act 1985.	In Schedule 6, paragraphs 7(3), 23 and 45.
1986 c. 45.	Insolvency Act 1986.	In sections 45(5), 53(2), 54(3) and 62(5), the words “and, for continued contravention, to a daily default fine”.
1986 c. 45— <i>cont.</i>	Insolvency Act 1986— <i>cont.</i>	In Schedule 10, the entries in column 5 relating to sections 45(5), 53(2), 54(3) and 62(5). In Part I of Schedule 13, the entries relating to sections 222(4), 225 and 733(3).
1986 c. 46.	Company Directors Disqualification Act 1986.	In section 21(2), the words “and section 431 (summary proceedings)”.
1986 c. 53.	Building Societies Act 1986.	In Schedule 15, in paragraph 3(2)(b), the words “, a shadow director”.
		In Schedule 18, paragraphs 16 and 17.
1986 c. 60.	Financial Services Act 1986.	In section 13—

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(a) subsection (1);

(b) subsections (4) to (6).

In section 48(1), the words “members of a recognised self-regulating organisation or” and “organisation or”.

In section 55—

(a) in subsection (2)(b) and (e), the words “a member of a recognised self-regulating organisation or” and “organisation or”;

(b) in subsection (3), the words “organisation or”.

In section 94—

(a) in subsection (3), the words “except section 435(1) (a) and (b) and (2)”;

(b) in subsection (4), the words “or its affairs”, “and the affairs mentioned in subsection (1) or (2) above” and “or director”.

Section 105(7).

In section 119(5), the words from “and the practices referred to in paragraph (c)” to the end.

In sections 159(1) and 160(1), the words from the beginning to “section 161 below”.

In section 179(3), the word “and” preceding paragraph (i).

Section 180(6).

Section 196(3).

Section 198(1).

In section 199(9), the words from “and, in relation” to the end.

In Schedule 11—

(a) paragraph 4(4)(b);

1986 c. 60—*cont.*

Financial Services Act
1986—*cont.*

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		(b) paragraph 7;
		(c) in paragraph 10(3), the words from “and the practices referred to in paragraph (c)” to the end;
		(d) in paragraph 14(1), the words “other than a member society”;
		(e) in paragraph 14(3), the word “and” after paragraph (a).
		In Schedule 16, paragraph 22.
1987 c. 22.	Banking Act 1987.	In the Table in section 84(1), the entry relating to persons appointed under section 94, 106 or 177 of the Financial Services Act 1986.
		Section 90(1).
		In Schedule 6—
		(a) paragraph 18(1) to (6);
		(b) in paragraph 18(7), the words “and (1A)”;
		(c) paragraph 18(8) and (9);
		(d) in paragraph 27(3), the words “and (6)”.
1987 c. 41.	Criminal Justice (Scotland) Act 1987.	Section 55(a).
1988 c. 1.	Income and Corporation Taxes Act 1988.	Section 565(6)(b).
1988 c. 33.	Criminal Justice Act 1988.	Section 145(a).
1988 c. 48.	Copyright, Designs and Patents Act 1988.	In Schedule 7, paragraph 31.

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