

# COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY ENTERPRISE) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Community Interest Companies**

##### **Summary and background Supplementary**

##### *Section 57 - Fees*

265. This section provides for regulations to set the fees that may be charged by the Regulator (*subsection (1)*). The Regulations may provide for the registrar of companies to collect fees on behalf of the Regulator, so that only a single payment would need to be made in respect of matters that involve both the Regulator and the registrar (*subsection (2)*). An example would be the formation of a company as a CIC, where the Regulator applies the community interest test and the registrar of companies registers the company. In addition, the section enables the Regulator to charge fees (without the need for regulations) for providing services which he is not legally required to provide (*subsection (3)*). However, the Regulator cannot use the power under *subsection (3)* to charge fees for the provision of guidance of general interest.

##### *Section 58 - Extension of provisions about registrar etc.*

266. This section will enable regulations to apply relevant provisions of Parts 24 and 25 of the Companies Act 1985 to any documents sent to the registrar under this Part of the Act, and allows those provisions to be modified if required. This Part of the Act imposes new functions and obligations on the registrar of companies. In particular, it provides for documents to be delivered to, and recorded by, the registrar. Part 24 of the Companies Act 1985 contains provisions in respect of the powers and functions of the registrar, including provisions relating to the delivery, recording and inspection of documents. Part 25 of the Companies Act 1985 makes provisions for confidentiality orders in respect of documents held by the Registrar.

##### *Section 59 - Information*

267. This section sets out the terms on which the Regulator will be able to disclose and receive information in connection with the exercise of his functions or the functions of other bodies.

268. As many of the Regulator's functions will require interaction with the registrar of companies, *subsection (1)* makes provision for regulations to require the registrar to provide information and documents to the Regulator.

269. *Subsection (2)* places a specific duty on the Accountant in Bankruptcy in Scotland to forward copies of notices of the appointment of a liquidator of a CIC to the Regulator,

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since in Scotland such notices are received by the Accountant in Bankruptcy and not the registrar of companies.

270. *Subsection (3)* amends section 31(2) of the Data Protection Act 1998. It creates exemptions from an individual's entitlement under that Act to obtain a copy of information held on him. The exemptions apply to public bodies acting to protect CICs against misconduct or mismanagement in their administration or acting to protect or recover the property of CICs (*subsection (3)(a)*). The exemptions will apply whether the misconduct or mismanagement is by a director or any other person (*subsection (3)(b)*).
271. The section also enables public authorities to pass information to the Regulator (*subsection (4)*). Similarly, the Regulator can pass information obtained in exercising his functions to other public authorities (*subsection (5)*). These disclosures of information are subject to the constraints set out in *subsections (6) to (8)*. The constraints include, in the case of disclosures to non-UK authorities (*subsection (6)*), the restrictions contained in section 243(6) of the Enterprise Act 2002, so that the Regulator, before disclosing information to an authority outside the United Kingdom, must consider:
- whether the reason for the request is sufficiently serious to justify disclosure;
  - the existence of appropriate protection against self-incrimination in criminal proceedings in the requesting country;
  - the existence of appropriate protection for the storage and disclosure of personal data in the requesting country; and
  - the existence of any mutual assistance agreements covering the information concerned with the requesting country.
272. *Subsection (8)* allows a restriction to be placed on further disclosure and *subsection (9)* makes it an offence to disclose information in contravention of any such restriction, the penalty under *subsection (10)* being a fine up to level 3 on the standard scale (currently £1,000).

### **Section 60 - Offences**

273. This section provides that where a corporate body (e.g. a company) commits an offence, those directors or other officers of the corporate body who are to blame for the offence can be penalised, as well as the corporate body itself.

### **Section 61 - Orders made by Regulator**

274. This section sets out procedural requirements for the making of orders by the Regulator. For instance, it specifies those to whom the various types of order are to be given (*subsection (1)*). *Subsection (3)* allows the Regulator to make savings and transitional provisions when discharging an order, so as to provide a measure of control over the extent of the discharge where necessary. For example, an order under *section 48(1)*, vesting the stock and equipment of a CIC in the Official Property Holder, might be discharged in part, so that all the stock is vested back in the CIC, but with a proviso that the CIC may not sell the stock for less than 50% of its book value, and with transitional provisions to make arrangements for the physical transfer of the stock. *Subsection (5)* requires the Regulator to give reasons for those of his orders and decisions for which the Act confers a right of appeal to the Appeal Officer or to the courts. The Regulator must give his reasons to those persons who have the right to appeal the order or decision. This is to ensure that they will have the information they need to make a decision about whether they have grounds to appeal.

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**Section 62 - Regulations**

275. This section contains provisions about the making of regulations under this Part of the Act. *Subsection (5)* specifies which of those regulations are to be made by affirmative procedure. The other regulations made under this Part of the Bill will be subject to negative procedure in both Houses (*subsection (6)*).