

Company Law Reform Bill [HL] (Volume II)

The Bill is divided into three volumes. Volume I contains Clauses 1 to 458. Volume II contains Clauses 459 to 804. Volume III contains the remaining Clauses and the Schedules.

CONTENTS

PART 1

GENERAL INTRODUCTORY PROVISIONS

Companies and Companies Acts

- 1 Companies
- 2 The Companies Acts

Types of company

- 3 Limited and unlimited companies
- 4 Private and public companies
- 5 Companies limited by guarantee and having share capital
- 6 Community interest companies

PART 2

COMPANY FORMATION

General

- 7 Method of forming company
- 8 Memorandum of association

Requirements for registration

- 9 Registration documents
- 10 Statement of capital and initial shareholdings
- 11 Statement of guarantee
- 12 Statement of proposed officers
- 13 Statement of compliance

Registration and its effect

- 14 Registration
- 15 Issue of certificate of incorporation
- 16 Effect of registration

PART 3

A COMPANY'S CONSTITUTION

CHAPTER 1

INTRODUCTORY

- 17 A company's constitution

CHAPTER 2

ARTICLES OF ASSOCIATION

General

- 18 Articles of association
19 Power of Secretary of State to prescribe model articles
20 Default application of model articles

Alteration of articles

- 21 Alteration of articles
22 Entrenched provisions of the articles
23 Notice to registrar in case of entrenched provisions
24 Notice to registrar of removal of entrenched provisions
25 Effect of alteration of articles on company's members
26 Registrar to be sent copy of amended articles
27 Registrar's notice to comply in case of failure with respect to amended articles

Supplementary

- 28 Existing companies: provisions of memorandum treated as provisions of articles

CHAPTER 3

RESOLUTIONS AND AGREEMENTS AFFECTING A COMPANY'S CONSTITUTION

- 29 Resolutions and agreements affecting a company's constitution
30 Copies of resolutions or agreements to be forwarded to and recorded by registrar
31 Resolutions and agreements to be embodied in or attached to issued copies of articles

CHAPTER 4

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Statement of company's objects

- 32 Statement of company's objects

Other provisions with respect to a company's constitution

- 33 Constitutional documents to be provided to members
- 34 Effect of company's constitution
- 35 Notice to registrar where company's constitution altered by enactment
- 36 Notice to registrar where company's constitution altered by order

Supplementary provisions

- 37 Right to participate in profits otherwise than as member void
- 38 Application to single member companies of enactments and rules of law

PART 4

A COMPANY'S CAPACITY AND RELATED MATTERS

Capacity of company and power of directors to bind it

- 39 A company's capacity
- 40 Power of directors to bind the company
- 41 Constitutional limitations: transactions involving directors or their associates
- 42 Constitutional limitations: companies that are charities

Formalities of doing business under the law of England and Wales or Northern Ireland

- 43 Company contracts
- 44 Execution of documents
- 45 Common seal
- 46 Execution of deeds
- 47 Execution of deeds or other documents by attorney
- 48 Authentication of documents

Formalities of doing business under the law of Scotland

- 49 Execution of documents by companies

Other matters

- 50 Official seal for use abroad
- 51 Official seal for share certificates etc
- 52 Pre-incorporation contracts, deeds and obligations
- 53 Bills of exchange and promissory notes

PART 5

A COMPANY'S NAME

CHAPTER 1

GENERAL REQUIREMENTS

Prohibited names

- 54 Prohibited names

Sensitive words and expressions

- 55 Names suggesting connection with government or public authority
- 56 Other sensitive words or expressions
- 57 Duty to seek comments of government department or other specified body

Permitted characters etc

- 58 Permitted characters etc

CHAPTER 2

INDICATIONS OF COMPANY TYPE OR LEGAL FORM

Required indications for limited companies

- 59 Public limited companies
- 60 Private limited companies
- 61 Exemption from requirement as to use of “limited”
- 62 Continuation of existing exemption: companies limited by shares
- 63 Continuation of existing exemption: companies limited by guarantee
- 64 Exempt company: restriction on alteration of articles
- 65 Power to direct change of name in case of company ceasing to be entitled to exemption

Inappropriate use of indications of company type or legal form

- 66 Inappropriate use of indications of company type or legal form

CHAPTER 3

SIMILARITY TO OTHER NAMES

Similarity to other name on registrar’s index

- 67 Name not to be the same as another in the index
- 68 Power to direct change of name in case of similarity to existing name
- 69 Direction to change name: supplementary provisions

Similarity to other name in which person has goodwill

- 70 Objection to company’s registered name
- 71 Company names adjudicators
- 72 Procedural rules
- 73 Order requiring name to be changed
- 74 Appeal from adjudicator’s decision

CHAPTER 4

OTHER POWERS OF THE SECRETARY OF STATE

- 75 Provision of misleading information etc
- 76 Misleading indication of activities

CHAPTER 5

CHANGE OF NAME

- 77 Change of name
- 78 Change of name by special resolution
- 79 Change of name by means provided for in company's articles
- 80 Change of name: registration and issue of new certificate of incorporation
- 81 Change of name: effect

CHAPTER 6

TRADING DISCLOSURES

- 82 Requirement to disclose company name etc
- 83 Civil consequences of failure to make required disclosure
- 84 Criminal consequences of failure to make required disclosures
- 85 Minor variations in form of name to be left out of account

PART 6

A COMPANY'S REGISTERED OFFICE

General

- 86 A company's registered office
- 87 Change of address of registered office

Welsh companies

- 88 Welsh companies

PART 7

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

Introductory

- 89 Alteration of status by re-registration

Private company becoming public

- 90 Re-registration of private company as public
- 91 Requirements as to share capital
- 92 Requirements as to net assets
- 93 Recent allotment of shares for non-cash consideration
- 94 Application and accompanying documents
- 95 Statement of proposed secretary
- 96 Issue of certificate of incorporation on re-registration

Public company becoming private

- 97 Re-registration of public company as private limited company
- 98 Application to court to cancel resolution

- 99 Notice to registrar of court application or order
- 100 Application and accompanying documents
- 101 Issue of certificate of incorporation on re-registration

Private limited company becoming unlimited

- 102 Re-registration of private limited company as unlimited
- 103 Application and accompanying documents
- 104 Issue of certificate of incorporation on re-registration

Unlimited private company becoming limited

- 105 Re-registration of unlimited company as limited
- 106 Application and accompanying documents
- 107 Issue of certificate of incorporation on re-registration

Public company becoming private and unlimited

- 108 Re-registration of public company as private and unlimited
- 109 Application and accompanying documents
- 110 Issue of certificate of incorporation on re-registration

PART 8

MEMBERS OF A COMPANY

CHAPTER 1

THE MEMBERS OF A COMPANY

- 111 The members of a company

CHAPTER 2

REGISTER OF MEMBERS

General

- 112 Register of members
- 113 Register to be kept available for inspection
- 114 Index of members
- 115 Rights to inspect and require copies
- 116 Register of members: response to request for inspection or copy
- 117 Register of members: refusal of inspection or default in providing copy
- 118 Register of members: offences in connection with request for or disclosure of information
- 119 Information as to state of register and index
- 120 Removal of entries relating to former members

Special cases

- 121 Share warrants
- 122 Single member companies
- 123 Company holding its own shares as treasury shares

Supplementary

- 124 Power of court to rectify register
- 125 Trusts not to be entered on register
- 126 Register to be evidence
- 127 Time limit for claims arising from entry in register
- 128 Overseas branch registers

CHAPTER 3

PROHIBITION ON SUBSIDIARY BEING MEMBER OF ITS HOLDING COMPANY

General prohibition

- 129 Prohibition on subsidiary being a member of its holding company
- 130 Shares acquired before prohibition became applicable

Subsidiary acting as personal representative or trustee

- 131 Subsidiary acting as personal representative or trustee
- 132 Interests to be disregarded: residual interest under pension scheme or employees' share scheme
- 133 Interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme

Subsidiary acting as dealer in securities

- 134 Subsidiary acting as authorised dealer in securities
- 135 Protection of third parties in other cases where subsidiary acting as dealer in securities

Supplementary

- 136 Application of provisions to companies not limited by shares
- 137 Application of provisions to nominees

PART 9

EXERCISE OF MEMBERS' RIGHTS

- 138 Enjoyment or exercise of members' rights

PART 10

COMPANY DIRECTORS

CHAPTER 1

APPOINTMENT AND REMOVAL OF DIRECTORS

Requirement to have directors

- 139 Companies required to have directors
- 140 Companies required to have at least one director who is a natural person
- 141 Direction requiring company to make appointment

Appointment

- 142 Minimum age for appointment as director
- 143 Power to provide for exceptions from minimum age requirement
- 144 Existing under-age directors
- 145 Appointment of directors of public company to be voted on individually
- 146 Validity of acts of directors

Register of directors, etc

- 147 Register of directors
- 148 Particulars of directors to be registered: individuals
- 149 Particulars of directors to be registered: corporate directors and firms
- 150 Register of directors' residential addresses
- 151 Particulars of directors to be registered: power to make regulations
- 152 Duty to notify registrar of changes
- 153 Application of provisions to shadow directors

Removal

- 154 Resolution to remove director
- 155 Director's right to protest removal

CHAPTER 2

GENERAL DUTIES OF DIRECTORS

Introductory

- 156 Scope and nature of general duties

The general duties

- 157 Duty to act within powers
- 158 Duty to promote the success of the company
- 159 Duty to exercise independent judgment
- 160 Duty to exercise reasonable care, skill and diligence
- 161 Duty to avoid conflicts of interest
- 162 Duty not to accept benefits from third parties
- 163 Duty to declare interest in proposed transaction or arrangement

Supplementary provisions

- 164 Civil consequences of breach of general duties
- 165 Cases within more than one of the general duties
- 166 Consent, approval or authorisation by members
- 167 Modification of provisions in relation to charitable companies

CHAPTER 3

DECLARATION OF INTEREST IN EXISTING TRANSACTION OR ARRANGEMENT

- 168 Declaration of interest in existing transaction or arrangement
- 169 Offence of failure to declare interest
- 170 Declaration made by notice in writing

- 171 General notice treated as sufficient declaration
- 172 Declaration of interest in case of company with sole director
- 173 Declaration of interest in existing transaction by shadow director

CHAPTER 4

TRANSACTIONS WITH DIRECTORS REQUIRING APPROVAL OF MEMBERS

Service contracts

- 174 Directors' long-term service contracts: requirement of members' approval
- 175 Directors' long-term service contracts: civil consequences of contravention

Substantial property transactions

- 176 Substantial property transactions: requirement of members' approval
- 177 Meaning of "substantial"
- 178 Exception for transactions with members or other group companies
- 179 Exception in case of company in winding up or administration
- 180 Exception for transactions on recognised investment exchange
- 181 Property transactions: civil consequences of contravention
- 182 Property transactions: effect of subsequent affirmation

Loans, quasi-loans and credit transactions

- 183 Loans or quasi-loans: requirement of members' approval
- 184 Meaning of "quasi-loan" and related expressions
- 185 Credit transactions: requirement of members' approval
- 186 Meaning of "credit transaction"
- 187 Related arrangements: requirement of members' approval
- 188 Exception for expenditure on company business
- 189 Exception for expenditure on defending proceedings etc
- 190 Exception for expenditure in connection with regulatory action or investigation
- 191 Exceptions for minor and business transactions
- 192 Exceptions for intra-group transactions
- 193 Exceptions for money-lending companies
- 194 Other relevant transactions or arrangements
- 195 The value of transactions and arrangements
- 196 The person for whom a transaction or arrangement is entered into
- 197 Loans etc: civil consequences of contravention
- 198 Loans etc: effect of subsequent affirmation

Payments for loss of office

- 199 Payments for loss of office
- 200 Amounts taken to be payments for loss of office
- 201 Payment by company: requirement of members' approval
- 202 Payment in connection with transfer of undertaking etc: requirement of members' approval
- 203 Payment in connection with share transfer: requirement of members' approval
- 204 Exception for payments in discharge of legal obligations etc
- 205 Exception for small payments

- 206 Payments made without approval: civil consequences

Supplementary

- 207 Transactions requiring members' approval: application of provisions to shadow directors
 208 Transactions requiring members' approval: nature of resolution required
 209 Approval by written resolution: accidental failure to send memorandum
 210 Cases where approval is required under more than one provision

CHAPTER 5

DIRECTORS' SERVICE CONTRACTS

- 211 Directors' service contracts
 212 Copy of contract or memorandum of terms to be available for inspection
 213 Right of member to inspect and request copy
 214 Directors' service contracts: application of provisions to shadow directors

CHAPTER 6

CONTRACTS WITH SOLE MEMBERS WHO ARE DIRECTORS

- 215 Contract with sole member who is also a director

CHAPTER 7

DIRECTORS' LIABILITIES

Provision protecting directors from liability

- 216 Provisions protecting directors from liability
 217 Provision of insurance
 218 Qualifying third party indemnity provision
 219 Qualifying third party indemnity provision to be disclosed in directors' report
 220 Copy of qualifying third party indemnity provision to be available for inspection
 221 Right of member to inspect and request copy

Ratification of acts giving rise to liability

- 222 Ratification of acts of directors

CHAPTER 8

DIRECTORS' RESIDENTIAL ADDRESSES: PROTECTION FROM DISCLOSURE

- 223 Protected information
 224 Protected information: restriction on use or disclosure by company
 225 Protected information: restriction on use or disclosure by registrar
 226 Permitted use or disclosure by the registrar
 227 Disclosure under court order
 228 Circumstances in which registrar may put address on the public record

- 229 Putting the address on the public record

CHAPTER 9

SUPPLEMENTARY PROVISIONS

Provision for employees on cessation or transfer of business

- 230 Power to make provision for employees on cessation or transfer of business

Records of meetings of directors

- 231 Minutes of directors' meetings
232 Minutes as evidence

Meaning of "director" and "shadow director"

- 233 "Director"
234 "Shadow director"

Other definitions

- 235 Persons connected with a director
236 Members of a director's family
237 Director "connected with" a body corporate
238 Director "controlling" a body corporate
239 Associated bodies corporate
240 References to company's constitution

General

- 241 Power to increase financial limits
242 Transactions under foreign law

PART 11

DERIVATIVE CLAIMS AND PROCEEDINGS BY MEMBERS

CHAPTER 1

DERIVATIVE CLAIMS IN ENGLAND AND WALES OR NORTHERN IRELAND

- 243 Derivative claims
244 Application for permission to continue derivative claim
245 Application for permission to continue claim as a derivative claim
246 Whether permission to be given
247 Application for permission to continue derivative claim brought by another member

CHAPTER 2

DERIVATIVE PROCEEDINGS IN SCOTLAND

- 248 Derivative proceedings

- 249 Requirement for leave and notice
- 250 Application to continue proceedings as derivative proceedings
- 251 Granting of leave
- 252 Application by member to be substituted for member pursuing derivative proceedings

PART 12

COMPANY SECRETARIES

General

- 253 Private company not required to have secretary
- 254 Public company required to have secretary
- 255 Direction requiring public company to appoint secretary

Provisions applying to secretaries of public companies

- 256 Qualifications of secretaries of public companies
- 257 Discharge of functions where office vacant or secretary unable to act
- 258 Duty to keep register of secretaries
- 259 Duty to notify registrar of changes

Supplementary

- 260 Particulars of secretaries to be registered: individuals
- 261 Particulars of secretaries to be registered: corporate secretaries and firms
- 262 Particulars of secretaries to be registered: power to make regulations
- 263 Acts done by person in dual capacity

PART 13

RESOLUTIONS AND MEETINGS

CHAPTER 1

GENERAL PROVISIONS ABOUT RESOLUTIONS

- 264 Resolutions
- 265 Ordinary resolutions
- 266 Special resolutions
- 267 Votes: general rules
- 268 Votes: specific requirements
- 269 Votes of joint holders of shares
- 270 Effect of provision in company's articles as to admissibility of votes

CHAPTER 2

WRITTEN RESOLUTIONS

General provisions about written resolutions

- 271 Written resolutions of private companies
- 272 Eligible members

Circulation of written resolutions

- 273 Circulation date
- 274 Circulation of written resolutions proposed by directors
- 275 Members' power to require circulation of written resolution
- 276 Circulation of written resolution proposed by members
- 277 Expenses of circulation
- 278 Application not to circulate members' statement

Agreeing to written resolutions

- 279 Procedure for signifying agreement to written resolution
- 280 Period for agreeing to written resolution

Supplementary

- 281 Sending documents relating to written resolutions by electronic means
- 282 Publication of written resolution on website
- 283 Relationship between this Chapter and provisions of company's articles

CHAPTER 3**RESOLUTIONS AT MEETINGS***General provisions about resolutions at meetings*

- 284 Resolutions at general meetings

Calling meetings

- 285 Directors' power to call general meetings
- 286 Members' power to require directors to call general meeting
- 287 Directors' duty to call meetings required by members
- 288 Power of members to call meeting at company's expense
- 289 Power of court to order meeting

Notice of meetings

- 290 Notice required of general meeting
- 291 Manner in which notice to be given
- 292 Publication of notice of meeting on website
- 293 Persons entitled to receive notice of meetings
- 294 Contents of notices of meetings
- 295 Resolution requiring special notice
- 296 Accidental failure to give notice of resolution or meeting

Members' statements

- 297 Members' power to require circulation of statements
- 298 Company's duty to circulate members' statement
- 299 Expenses of circulating members' statement
- 300 Application not to circulate members' statement

Procedure at meetings

- 301 Quorum at meetings
- 302 Chairman of meeting
- 303 Declaration by chairman on a show of hands
- 304 Right to demand a poll
- 305 Voting on a poll
- 306 Representation of corporations at meetings

Proxies

- 307 Rights to appoint proxies
- 308 Notice of meeting to contain statement of rights
- 309 Company-sponsored invitations to appoint proxies
- 310 Notice required of appointment of proxy etc
- 311 Chairing meetings
- 312 Right of proxy to demand a poll
- 313 Notice required of termination of proxy's authority
- 314 Saving for more extensive rights conferred by articles

Adjourned meetings

- 315 Resolution passed at adjourned meeting

Electronic communications

- 316 Sending documents relating to meetings etc in electronic form

Application to class meetings

- 317 Application to class meetings
- 318 Application to class meetings: companies without a share capital

CHAPTER 4

PUBLIC COMPANIES: ADDITIONAL REQUIREMENTS FOR AGMS

- 319 Public companies: annual general meeting
- 320 Public companies: notice of AGM
- 321 Public companies: members' power to require circulation of resolutions for AGMs
- 322 Public companies: company's duty to circulate members' resolutions for AGMs
- 323 Public companies: expenses of circulating members' resolutions for AGM

CHAPTER 5

ADDITIONAL REQUIREMENTS FOR QUOTED COMPANIES

Website publication of poll results

- 324 Results of poll to be made available on website

Independent report on poll

- 325 Members' power to require independent report on poll
- 326 Appointment of independent assessor
- 327 Independence requirement
- 328 Meaning of "associate"
- 329 Effect of appointment of a partnership
- 330 The independent assessor's report
- 331 Rights of independent assessor: right to attend meeting etc
- 332 Rights of independent assessor: right to information
- 333 Offences relating to provision of information
- 334 Information to be made available on website

Supplementary

- 335 Application of provisions to class meetings
- 336 Requirements as to website availability
- 337 Power to limit or extend the types of company to which provisions of this Chapter apply

CHAPTER 6

RECORDS OF RESOLUTIONS AND MEETINGS

- 338 Records of resolutions and meetings etc
- 339 Records as evidence of resolutions etc
- 340 Records of decisions by sole member
- 341 Inspection of records of resolutions and meetings
- 342 Records of resolutions and meetings of class of members

CHAPTER 7

SUPPLEMENTARY PROVISIONS

- 343 Meaning of "quoted company"

PART 14

CONTROL OF POLITICAL DONATIONS AND EXPENDITURE

Introductory

- 344 Introductory

Donations and expenditure to which this Part applies

- 345 Political parties, organisations etc to which this Part applies
- 346 Meaning of "political donation"
- 347 Meaning of "political expenditure"

Authorisation required for donations or expenditure

- 348 Authorisation required for donations or expenditure
- 349 Form of authorising resolution
- 350 Majority required for authorising resolution

351 Period for which resolution has effect

Remedies in case of unauthorised donations or expenditure

352 Liability of directors in case of unauthorised donation or expenditure

353 Enforcement of directors' liabilities by shareholder action

354 Costs of shareholder action

355 Information for purposes of shareholder action

Exemptions

356 Trade unions

357 Subscription for membership of trade association

358 All-party parliamentary groups

359 Political expenditure exempted by order

360 Donations not amounting to more than £5,000 in any twelve month period

Supplementary provisions

361 Minor definitions

PART 15

ACCOUNTS AND REPORTS

CHAPTER 1

INTRODUCTION

General

362 Scheme of this Part

Companies subject to the small companies regime

363 Companies subject to the small companies regime

364 Companies qualifying as small: general

365 Companies qualifying as small: parent companies

366 Companies excluded from the small companies regime

Quoted and unquoted companies

367 Quoted and unquoted companies

CHAPTER 2

ACCOUNTING RECORDS

368 Duty to keep accounting records

369 Duty to keep accounting records: offence

370 Where and for how long records to be kept

371 Where and for how long records to be kept: offences

CHAPTER 3

A COMPANY'S FINANCIAL YEAR

- 372 A company's financial year
- 373 Accounting reference periods and accounting reference date
- 374 Alteration of accounting reference date

CHAPTER 4

ANNUAL ACCOUNTS

General

- 375 Accounts to give true and fair view

Individual accounts

- 376 Duty to prepare individual accounts
- 377 Individual accounts: applicable accounting framework
- 378 Companies Act individual accounts
- 379 IAS individual accounts

Group accounts: small companies

- 380 Option to prepare group accounts

Group accounts: other companies

- 381 Duty to prepare group accounts
- 382 Exemption for company included in EEA group accounts of larger group
- 383 Exemption for company included in non-EEA group accounts of larger group
- 384 Exemption if no subsidiary undertakings need be included in the consolidation

Group accounts: general

- 385 Group accounts: applicable accounting framework
- 386 Companies Act group accounts
- 387 Companies Act group accounts: subsidiary undertakings included in the consolidation
- 388 IAS group accounts
- 389 Consistency of financial reporting within group
- 390 Individual profit and loss account where group accounts prepared

Information to be given in notes to the accounts

- 391 Information about related undertakings
- 392 Information about related undertakings: alternative compliance
- 393 Information about employee numbers and costs
- 394 Information about directors' benefits: remuneration
- 395 Information about directors' benefits: advances, credit and guarantees

Approval and signing of accounts

- 396 Approval and signing of accounts

CHAPTER 5

DIRECTORS' REPORT

Directors' report

- 397 Duty to prepare directors' report
 398 Contents of directors' report: general
 399 Contents of directors' report: business review
 400 Contents of directors' report: statement as to disclosure to auditors
 401 Approval and signing of directors' report

CHAPTER 6

QUOTED COMPANIES: DIRECTORS' REMUNERATION REPORT

- 402 Duty to prepare directors' remuneration report
 403 Contents of directors' remuneration report
 404 Approval and signing of directors' remuneration report

CHAPTER 7

PUBLICATION OF ACCOUNTS AND REPORTS

Duty to circulate copies of accounts and reports

- 405 Duty to circulate copies of annual accounts and reports
 406 Time allowed for sending out copies of accounts and reports
 407 Default in sending out copies of accounts and reports: offences

Option to provide summary financial statement

- 408 Option to provide summary financial statement
 409 Form and contents of summary financial statement: unquoted companies
 410 Form and contents of summary financial statement: quoted companies
 411 Summary financial statements: offences

Quoted companies: requirements as to website publication

- 412 Quoted companies: annual accounts and reports to be made available on website
 413 Quoted companies: preliminary statement of results to be made available on website
 414 Requirements as to website availability

Right of member or debenture holder to demand copies of accounts and reports

- 415 Right of member or debenture holder to copies of accounts and reports: unquoted companies
 416 Right of member or debenture holder to copies of accounts and reports: quoted companies

Requirements in connection with publication of accounts and reports

- 417 Name of signatory to be stated in published copies of accounts and reports
- 418 Requirements in connection with publication of statutory accounts
- 419 Requirements in connection with publication of non-statutory accounts
- 420 Meaning of “publication” in relation to accounts and reports

CHAPTER 8

PUBLIC COMPANIES: LAYING OF ACCOUNTS AND REPORTS BEFORE GENERAL MEETING

- 421 Public companies: laying of accounts and reports before general meeting
- 422 Public companies: offence of failure to lay accounts and reports

CHAPTER 9

QUOTED COMPANIES: MEMBERS’ APPROVAL OF DIRECTORS’ REMUNERATION REPORT

- 423 Quoted companies: members’ approval of directors’ remuneration report
- 424 Quoted companies: offences in connection with procedure for approval

CHAPTER 10

FILING OF ACCOUNTS AND REPORTS

Duty to file accounts and reports

- 425 Duty to file accounts and reports with the registrar
- 426 Period allowed for filing accounts
- 427 Calculation of period allowed

Filing obligations of different descriptions of company

- 428 Filing obligations of companies subject to small companies regime
- 429 Filing obligations of medium-sized companies
- 430 Filing obligations of unquoted companies
- 431 Filing obligations of quoted companies
- 432 Unlimited companies exempt from obligation to file accounts

Requirements where abbreviated accounts delivered

- 433 Special auditor’s report where abbreviated accounts delivered
- 434 Approval and signing of abbreviated accounts

Failure to file accounts and reports

- 435 Default in filing accounts and reports: offences
- 436 Default in filing accounts and reports: court order
- 437 Civil penalty for failure to file accounts and reports

CHAPTER 11

REVISION OF DEFECTIVE ACCOUNTS AND REPORTS

Voluntary revision

- 438 Voluntary revision of accounts etc

Secretary of State's notice

- 439 Secretary of State's notice in respect of accounts or reports

Application to court

- 440 Application to court in respect of defective accounts or reports
441 Other persons authorised to apply to the court
442 Disclosure of information by tax authorities

Power of authorised person to require documents etc

- 443 Power of authorised person to require documents, information and explanations
444 Restrictions on disclosure of information obtained under compulsory powers
445 Permitted disclosure of information obtained under compulsory powers
446 Power to amend categories of permitted disclosure

CHAPTER 12

SUPPLEMENTARY PROVISIONS

Liability for false or misleading statements in reports

- 447 Liability for false or misleading statements in reports

Accounting and reporting standards

- 448 Accounting standards

Companies qualifying as medium-sized

- 449 Companies qualifying as medium-sized: general
450 Companies qualifying as medium-sized: parent companies
451 Companies excluded from being treated as medium-sized

General power to make further provision about accounts and reports

- 452 General power to make further provision about accounts and reports

Other supplementary provisions

- 453 Preparation and filing of accounts in euros
454 Power to apply provisions to banking partnerships
455 Meaning of "annual accounts" and related expressions
456 Notes to the accounts

- 457 Parliamentary procedure for certain regulations under this Part
458 Minor definitions

PART 16

AUDIT

CHAPTER 1

REQUIREMENT FOR AUDITED ACCOUNTS

Requirement for audited accounts

- 459 Requirement for audited accounts
460 Right of members to require audit

Exemption from audit: small companies

- 461 Small companies: conditions for exemption from audit
462 Companies excluded from small companies exemption
463 Availability of small companies exemption in case of group company

Exemption from audit: dormant companies

- 464 Dormant companies: conditions for exemption from audit
465 Companies excluded from dormant companies exemption

Exemption from audit: certain charities

- 466 Small charities: independent examiner's report in lieu of audit
467 Companies excluded from report exemption
468 Availability of report exemption in case of group company
469 The independent examiner's report
470 The independent examiner
471 Rights of independent examiner

Companies subject to public sector audit

- 472 Non-profit-making companies subject to public sector audit
473 Scottish public sector companies: audit by Auditor General for Scotland

General power of amendment by regulations

- 474 General power of amendment by regulations

CHAPTER 2

APPOINTMENT OF AUDITORS

Private companies

- 475 Appointment of auditors of private company: general

- 476 Appointment of auditors of private company: default power of Secretary of State
- 477 Term of office of auditors of private company
- 478 Prevention by members of deemed re-appointment of auditor

Public companies

- 479 Appointment of auditors of public company: general
- 480 Appointment of auditors of public company: default power of Secretary of State
- 481 Term of office of auditors of public company

General provisions

- 482 Fixing of auditor's remuneration
- 483 Disclosure of terms of audit appointment
- 484 Disclosure of services provided by auditor or associates and related remuneration

CHAPTER 3

FUNCTIONS OF AUDITOR

Auditor's report

- 485 Auditor's report on company's annual accounts
- 486 Auditor's report on directors' report
- 487 Auditor's report on auditable part of directors' remuneration report

Duties and rights of auditors

- 488 Duties of auditor
- 489 Auditor's general right to information
- 490 Auditor's right to information from overseas subsidiaries
- 491 Auditor's rights to information: offences
- 492 Auditor's rights in relation to resolutions and meetings

Signature of auditor's report

- 493 Signature of auditor's report
- 494 Senior statutory auditor
- 495 Names to be stated in published copies of auditor's report
- 496 Circumstances in which names may be omitted

Offences in connection with auditor's report

- 497 Offences in connection with auditor's report
- 498 Guidance for regulatory and prosecuting authorities: England, Wales and Northern Ireland
- 499 Guidance for regulatory authorities: Scotland

CHAPTER 4

REMOVAL, RESIGNATION, ETC OF AUDITORS

Removal of auditor

- 500 Resolution removing auditor from office
- 501 Special notice required for resolution removing auditor from office
- 502 Notice to registrar of resolution removing auditor from office
- 503 Rights of auditor who has been removed from office

Failure to re-appoint auditor

- 504 Failure to re-appoint auditor: special procedure required for written resolution
- 505 Failure to re-appoint auditor: special notice required for resolution at general meeting

Resignation of auditor

- 506 Resignation of auditor
- 507 Notice to registrar of resignation of auditor
- 508 Rights of resigning auditor

Statement by auditor on ceasing to hold office

- 509 Statement by auditor to be deposited with company
- 510 Company's duties in relation to statement
- 511 Copy of statement to be sent to registrar
- 512 Duty of auditor to notify appropriate audit authority
- 513 Duty of company to notify appropriate audit authority
- 514 Information to be given to accounting authorities
- 515 Meaning of "appropriate audit authority" and "major audit"

Supplementary

- 516 Effect of casual vacancies

CHAPTER 5

QUOTED COMPANIES: RIGHT OF MEMBERS TO RAISE AUDIT CONCERNS AT ACCOUNTS MEETING

- 517 Members' power to require website publication of audit concerns
- 518 Requirements as to website availability
- 519 Website publication: company's supplementary duties
- 520 Website publication: offences
- 521 Meaning of "quoted company"

CHAPTER 6

AUDITORS' LIABILITY

Voidness of provisions protecting auditors from liability

- 522 Voidness of provisions protecting auditors from liability

Indemnity for costs of defending proceedings

- 523 Indemnity for costs of successfully defending proceedings

Liability limitation agreements

- 524 Liability limitation agreements
525 Terms of liability limitation agreement
526 Authorisation of agreement by members of the company
527 Effect of liability limitation agreement
528 Disclosure of agreement by company

CHAPTER 7

SUPPLEMENTARY PROVISIONS

- 529 Minor definitions

PART 17

PRIVATE AND PUBLIC COMPANIES

CHAPTER 1

PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

- 530 Prohibition of public offers by private company
531 Meaning of "offer to the public"
532 Enforcement of prohibition: order restraining proposed contravention
533 Enforcement of prohibition: orders available to the court after contravention
534 Enforcement of prohibition: remedial order
535 Validity of allotment etc not affected

CHAPTER 2

MINIMUM SHARE CAPITAL REQUIREMENT FOR PUBLIC COMPANIES

- 536 Public company: requirement as to minimum share capital
537 Procedure for obtaining certificate
538 The authorised minimum
539 Consequences of doing business etc without a trading certificate

PART 18

ALLOTMENT OF SHARES

Power of directors to allot shares

- 540 Exercise by directors of power to allot shares etc
- 541 Power of directors to allot shares etc: private company with only one class of shares
- 542 Power of directors to allot shares etc: authorisation by company

Public companies: allotment where issue not fully subscribed

- 543 Public companies: allotment where issue not fully subscribed
- 544 Effect of allotment in contravention of section 543

Return of allotments

- 545 Return of allotment by limited company
- 546 Return of allotment of new class of shares by unlimited company
- 547 Offence of failure to make return

Time for accepting pre-emption offer

- 548 Time for acceptance of pre-emption offers

Disapplication of pre-emption rights

- 549 Disapplication of pre-emption rights: private company with only one class of shares
- 550 Disapplication of pre-emption rights: directors acting under general authorisation
- 551 Disapplication of pre-emption rights by special resolution
- 552 Liability for false statement in directors' statement
- 553 Disapplication of pre-emption rights: sale of treasury shares

Commissions, discounts and allowances

- 554 Commissions, discounts and allowances

Provisions not applicable to shares taken on formation

- 555 Provisions not applicable to shares taken on formation

PART 19

SHARE CAPITAL

Share capital and how it may be altered

- 556 Companies having a share capital
- 557 Shares of limited companies to have fixed nominal value
- 558 Alteration of share capital of limited company
- 559 Sub-division or consolidation of shares

- 560 Notice to registrar of sub-division or consolidation
- 561 Re-conversion of stock into shares
- 562 Notice to registrar of alteration of share capital

Reserve capital

- 563 Abolition of reserve capital

Class rights

- 564 Variation of class rights: companies having a share capital
- 565 Variation of class rights: companies without a share capital
- 566 Variation of class rights: saving for court's powers under other provisions
- 567 Variation of class rights: right to object to variation
- 568 Registration of class rights

Share premiums

- 569 Application of share premiums

Reduction of share capital

- 570 Circumstances in which companies may reduce share capital
- 571 Reduction of capital supported by solvency statement
- 572 Registration of court order
- 573 Liability of members on reduced shares

Financial assistance

- 574 Financial assistance by company for acquisition of shares
- 575 Circumstances in which financial assistance is not prohibited

Redeemable shares

- 576 Redeemable shares

Purchase by company of its own shares

- 577 Power of company to purchase own shares
- 578 Statement of capital on disclosure by company of purchase etc of own shares
- 579 Copy of contract or memorandum of terms to be available for inspection
- 580 Power of private companies to redeem or purchase own shares out of capital
- 581 Conditions for redemption or purchase of own shares out of capital
- 582 Notice to registrar of payment out of capital for redemption or purchase of own shares

Transfers of shares etc

- 583 Registration of transfers of shares and debentures
- 584 Share certificates and share warrants

Distributions

- 585 Distributions in kind

Redenomination of share capital

- 586 Redenomination of share capital
- 587 Calculation of new nominal values
- 588 Effect of redenomination
- 589 Notice to registrar of redenomination
- 590 Reduction of capital in connection with redenomination
- 591 Notice to registrar of reduction of capital in connection with redenomination
- 592 Redenomination reserve

PART 20

DEBENTURES

- 593 Register of debenture holders
- 594 Register of debenture holders: right to inspect and require copy
- 595 Register of debenture holders: response to request for inspection or copy
- 596 Register of debenture holders: refusal of inspection or default in providing copy
- 597 Register of debenture holders: offences in connection with request for or disclosure of information
- 598 Time limit for claims arising from entry in register
- 599 Right of debenture holder to copy of deed

PART 21

TRANSFER OF SECURITIES

- 600 Transfer of securities: power to make regulations
- 601 Transfer of securities: extension of powers
- 602 Transfer of securities: order-making power
- 603 Transfer of securities: supplementary provisions

PART 22

INFORMATION ABOUT INTERESTS IN COMPANY'S SHARES

Introductory

- 604 Companies to which this Part applies
- 605 Shares to which this Part applies

Notice requiring information about interests in shares

- 606 Notice by company requiring information about interests in its shares
- 607 Notice requiring information: order imposing restrictions on shares
- 608 Notice requiring information: offences
- 609 Notice requiring information: persons exempted from obligation to comply

Power of members to require company to act

- 610 Power of members to require company to act
- 611 Duty of company to comply with requirement
- 612 Report to members on outcome of investigation
- 613 Report to members: offences

614 Right to inspect and request copy of reports

Register of interests disclosed

- 615 Register of interests disclosed
- 616 Register to be kept available for inspection
- 617 Associated index
- 618 Rights to inspect and require copy of entries
- 619 Court supervision of purpose for which rights may be exercised
- 620 Register of interests disclosed: refusal of inspection or default in providing copy
- 621 Register of interests disclosed: offences in connection with request for or disclosure of information
- 622 Entries not to be removed from register
- 623 Removal of entries from register: old entries
- 624 Removal of entries from register: incorrect entry relating to third party
- 625 Adjustment of entry relating to share acquisition agreement
- 626 Duty of company ceasing to be public company

Meaning of interest in shares

- 627 Interest in shares: general
- 628 Interest in shares: right to subscribe for shares
- 629 Interest in shares: family interests
- 630 Interest in shares: corporate interests
- 631 Interest in shares: agreement to acquire interests in a particular company
- 632 Extent of obligation in case of share acquisition agreement

Other supplementary provisions

- 633 Information protected from wider disclosure
- 634 Reckoning of periods for fulfilling obligations
- 635 Power to make further provision by regulations

PART 23

COMPANY'S ANNUAL RETURN

- 636 Duty to deliver annual returns
- 637 Contents of annual return: general
- 638 Contents of annual return: information about share capital and shareholders
- 639 Contents of annual return: power to make further provision by regulations
- 640 Failure to deliver annual return
- 641 Application of provisions to shadow directors

PART 24

TAKEOVERS ETC

CHAPTER 1

THE TAKEOVER PANEL

The Panel and its rules

- 642 The Panel
- 643 Rules
- 644 Further provisions about rules
- 645 Rulings
- 646 Directions

Information

- 647 Power to require documents and information
- 648 Restrictions on disclosure
- 649 Offence of disclosure in contravention of section 648

Co-operation

- 650 Panel's duty of co-operation

Hearings and appeals

- 651 Hearings and appeals

Contravention of rules etc

- 652 Sanctions
- 653 Failure to comply with rules about bid documentation
- 654 Compensation
- 655 Enforcement by the court
- 656 No action for breach of statutory duty etc

Funding

- 657 Fees and charges
- 658 Levy
- 659 Recovery of fees, charges or levy

Miscellaneous and supplementary

- 660 Panel as party to proceedings
- 661 Exemption from liability in damages
- 662 Privilege against self-incrimination
- 663 Annual reports
- 664 Amendments to Financial Services and Markets Act 2000
- 665 Power to extend to Isle of Man and Channel Islands

CHAPTER 2

IMPEDIMENTS TO TAKEOVERS

Opting in and opting out

- 666 Opting in and opting out
- 667 Further provision about opting-in and opting-out resolutions

Consequences of opting in

- 668 Effect on contractual restrictions
- 669 Power of offeror to require general meeting to be called

Supplementary

- 670 Communication of decisions
- 671 Interpretation of Chapter
- 672 Transitory provision
- 673 Power to extend to Isle of Man and Channel Islands

CHAPTER 3

AMENDMENTS TO COMPANIES ACT 1985

- 674 Matters to be dealt with in directors' report
- 675 Takeover offers

PART 25

COMPANY INVESTIGATIONS

- 676 Powers of Secretary of State to give directions to inspectors
- 677 Resignation, removal and replacement of inspectors
- 678 Power to obtain information from former inspectors etc
- 679 Power to require production of documents
- 680 Disqualification orders: consequential amendments

PART 26

DISSOLUTION AND RESTORATION TO THE REGISTER

Voluntary striking off

- 681 Voluntary striking off: extension to public companies

Crown disclaimer of property

- 682 Time for making Crown disclaimer of property vesting as bona vacantia

Administrative restoration to the register

- 683 Application for administrative restoration to the register
- 684 Requirements for administrative restoration

- 685 Application to be accompanied by statement of compliance
- 686 Registrar's decision on application for administrative restoration
- 687 Effect of administrative restoration

Restoration to the register by the court

- 688 Application to court for restoration to the register
- 689 When application to the court may be made
- 690 Decision on application for restoration by the court
- 691 Effect of court order for restoration to the register

Restoration to the register: supplementary provisions

- 692 Company's name on restoration
- 693 Restoration to the register: other amendments

PART 27

UK COMPANIES NOT FORMED UNDER THE COMPANIES ACTS

CHAPTER 1

COMPANIES NOT FORMED UNDER THE COMPANIES ACTS BUT AUTHORISED TO REGISTER

- 694 Companies authorised to register under the Companies Acts
- 695 Definition of "joint stock company"
- 696 Power to make provision by regulations
- 697 Application of provisions to existing companies

CHAPTER 2

UNREGISTERED COMPANIES

- 698 Unregistered companies

PART 28

OVERSEAS COMPANIES

Introductory

- 699 Overseas companies

Registration of particulars

- 700 Duty to register particulars
- 701 Registered name of overseas company
- 702 Registration under alternative name

Other requirements

- 703 Accounts and reports: general
- 704 Accounts and reports: credit or financial institutions
- 705 Trading disclosures

706 Other returns etc

Supplementary

707 Offences
708 Disclosure of individual's residential address: protection from disclosure
709 Requirement to identify persons authorised to accept service of documents
710 Registrar to whom returns, notices etc to be delivered
711 Duty to give notice of ceasing to have registrable presence
712 Application of provisions in case of relocation of branch

PART 29

THE REGISTRAR OF COMPANIES

The registrar

713 The registrar
714 The registrar's functions
715 The registrar's official seal
716 Fees payable to registrar

Certificates of incorporation

717 Public notice of issue of certificate of incorporation
718 Right to certificate of incorporation

Registered numbers

719 Company's registered numbers
720 Registered numbers of branches of overseas company

Delivery of documents to the registrar

721 Registrar's requirements
722 Power to require delivery by electronic means
723 Agreement for delivery by electronic means
724 Document not delivered until received

Defective delivery

725 Defective delivery
726 Informal correction of document
727 Voluntary replacement of document previously delivered
728 Exclusion of unnecessary material
729 Registrar's notice to remedy defective delivery

Public notice of receipt of certain documents

730 Public notice of receipt of certain documents
731 Documents subject to Directive disclosure requirements
732 Effect of failure to give public notice

The register

- 733 The register
- 734 Annotation of the register
- 735 Allocation of unique identifiers
- 736 Preservation of original documents
- 737 Records relating to companies that have been dissolved etc

Inspection etc of the register

- 738 Inspection of the register
- 739 Right to copy of material on the register
- 740 Material not available for public inspection
- 741 Application to registrar to make address unavailable for public inspection
- 742 Form of application for inspection or copy
- 743 Form and manner in which copies to be provided
- 744 Certification of copies as accurate
- 745 Issue of process for production of records kept by the registrar

Correction or removal of material on the register

- 746 Registrar's notice to resolve inconsistency on the register
- 747 Administrative removal of material from the register
- 748 Rectification of register on application to registrar
- 749 Rectification of the register under court order
- 750 Powers of court on ordering removal of material from the register
- 751 Public notice of removal of certain material from the register

The registrar's index of company names

- 752 The registrar's index of company names
- 753 Right to inspect index
- 754 Power to amend enactments relating to bodies other than companies

Language requirements: translation

- 755 Application of language requirements
- 756 Documents to be drawn up and delivered in English
- 757 Documents relating to Welsh companies
- 758 Documents that may be drawn up and delivered in other languages
- 759 Voluntary filing of translations
- 760 Certified translations

Language requirements: transliteration

- 761 Transliteration of names and addresses: permitted characters
- 762 Transliteration of names and addresses: voluntary transliteration into Roman characters
- 763 Transliteration of names and addresses: certification

Supplementary provisions

- 764 General false statement offence
- 765 Enforcement of company's filing obligations
- 766 Application of provisions about documents and delivery

- 767 Provisions requiring copies of court orders to be delivered to the registrar
- 768 Supplementary provisions relating to electronic communications
- 769 Alternative to publication in the Gazette
- 770 Registrar's rules
- 771 Payments into the Consolidated Fund
- 772 Contracting out of registrar's functions
- 773 Application of Part to overseas companies

PART 30

OFFENCES UNDER THE COMPANIES ACTS

Liability of officer in default

- 774 Liability of officer in default
- 775 Liability of company as officer in default
- 776 Application to bodies other than companies

Offences under the Companies Act 1985

- 777 Amendments of the Companies Act 1985

General provisions

- 778 Meaning of "daily default fine"
- 779 Consents required for certain prosecutions
- 780 Summary proceedings: venue
- 781 Summary proceedings: time limit for proceedings
- 782 Legal professional privilege
- 783 Proceedings against unincorporated bodies
- 784 Imprisonment on summary conviction in England and Wales: transitory provision

Supplementary

- 785 Transitional provision

PART 31

COMPANIES: SUPPLEMENTARY PROVISIONS

Company records

- 786 Meaning of "company records"
- 787 Form of company records
- 788 Regulations about inspection of records and provision of copies
- 789 Duty to take precautions against falsification

Service addresses

- 790 Service of documents on company
- 791 Service of documents on directors, secretaries and others
- 792 Service addresses
- 793 Requirement to give service address

Sending or supplying documents or information

- 794 The company communications provisions
- 795 Sending or supplying documents or information
- 796 Construction of provisions about documents or information sent or supplied
- 797 Right to hard copy version
- 798 Requirement of authentication
- 799 Deemed delivery of documents and information
- 800 Interpretation of company communications provisions

Notice of appointment of certain officers

- 801 Duty to notify registrar of certain appointments etc
- 802 Offence of failure to give notice

Courts and legal proceedings

- 803 Meaning of “the court”
- 804 Power of court to grant relief in certain cases

PART 32

COMPANIES: INTERPRETATION

Meaning of "undertaking" and related expressions

- 805 Meaning of “undertaking” and related expressions
- 806 Parent and subsidiary undertakings

Other definitions

- 807 Hard copy and electronic form and related expressions
- 808 Classes of shares
- 809 Dormant companies
- 810 Meaning of “EEA State” and related expressions
- 811 The former Companies Acts

General

- 812 References to requirements of this Act
- 813 Minor definitions: general
- 814 Index of defined expressions

PART 33

COMPANIES: MINOR AMENDMENTS

- 815 Power of Secretary of State to bring civil proceedings on company’s behalf
- 816 Repeal of certain provisions about company directors
- 817 Repeal of requirement that certain companies publish periodical statement
- 818 Repeal of requirement that Secretary of State prepare annual report
- 819 Repeal of certain provisions about company charges
- 820 Access to constitutional documents of RTE and RTM companies

PART 34

BUSINESS NAMES

CHAPTER 1

RESTRICTED OR PROHIBITED NAMES

Introductory

821 Application of this Chapter

Sensitive words or expressions

- 822 Name suggesting connection with government or public authority
823 Other sensitive words or expressions
824 Requirement to seek comments of government department or other relevant body
825 Withdrawal of Secretary of State's approval

Misleading names

- 826 Name containing inappropriate indication of company type or legal form
827 Name giving misleading indication of activities

Supplementary

828 Savings for existing lawful business names

CHAPTER 2

DISCLOSURE REQUIRED IN CASE OF INDIVIDUAL OR PARTNERSHIP

Introductory

- 829 Application of this Chapter
830 Information required to be disclosed

Disclosure requirements

- 831 Disclosure required: business documents etc
832 Exemption for large partnerships if certain conditions met
833 Disclosure required: business premises

Consequences of failure to make required disclosure

- 834 Criminal consequences of failure to make required disclosure
835 Civil consequences of failure to make required disclosure

CHAPTER 3

SUPPLEMENTARY

836 Application of general provisions about offences

837 Interpretation

PART 35

STATUTORY AUDITORS

CHAPTER 1

INTRODUCTORY

- 838 Main purposes of Part
- 839 Meaning of “statutory auditor” etc
- 840 Eligibility for appointment as a statutory auditor: overview

CHAPTER 2

INDIVIDUALS AND FIRMS

Eligibility for appointment

- 841 Individuals and firms: eligibility for appointment as a statutory auditor
- 842 Effect of ineligibility

Independence requirement

- 843 Independence requirement
- 844 Effect of lack of independence

Effect of appointment of a partnership

- 845 Effect of appointment of a partnership

Supervisory bodies

- 846 Supervisory bodies
- 847 Exemption from liability for damages

Professional qualifications

- 848 Appropriate qualifications
- 849 Qualifying bodies and recognised professional qualifications
- 850 Approval of overseas qualifications
- 851 Eligibility of individuals retaining only 1967 Act authorisation

Information

- 852 Matters to be notified to the Secretary of State
- 853 The Secretary of State’s power to call for information

Enforcement

- 854 Compliance orders

CHAPTER 3

AUDITORS GENERAL

Eligibility for appointment

- 855 Auditors General: eligibility for appointment as a statutory auditor

Conduct of audits

- 856 Individuals responsible for audit work on behalf of Auditors General

The Independent Supervisor

- 857 Appointment of the Independent Supervisor

Supervision of Auditors General

- 858 Supervision of Auditors General by the Independent Supervisor
859 Duties of Auditors General in relation to supervision arrangements

Reporting requirement

- 860 Reports by the Independent Supervisor

Information

- 861 Matters to be notified to the Independent Supervisor
862 The Independent Supervisor's power to call for information

Enforcement

- 863 Suspension notices
864 Effect of suspension notices
865 Compliance orders

Proceedings

- 866 Proceedings involving the Independent Supervisor

Grants

- 867 Grants to the Independent Supervisor

CHAPTER 4

THE REGISTER OF AUDITORS ETC

- 868 The register of auditors
869 Information to be made available to public

CHAPTER 5

REGISTERED THIRD COUNTRY AUDITORS

Introductory

- 870 Meaning of “third country auditor”, “registered third country auditor” etc

Duties

- 871 Duties of registered third country auditors

Information

- 872 Matters to be notified to the Secretary of State
873 The Secretary of State’s power to call for information

Enforcement

- 874 Compliance orders
875 Removal of third country auditors from the register of auditors
876 Grants to bodies concerned with arrangements under Schedule 12

CHAPTER 6

SUPPLEMENTARY AND GENERAL

Power to require second company audit

- 877 Secretary of State’s power to require second audit of a company
878 Supplementary provision about second audits

False and misleading statements

- 879 Misleading, false and deceptive statements

Fees

- 880 Fees

Delegation of Secretary of State’s functions

- 881 Delegation of the Secretary of State’s functions
882 Delegation of functions to an existing body

International obligations

- 883 Directions to comply with international obligations

General provision relating to offences

- 884 Offences by bodies corporate, partnerships and unincorporated associations
885 Time limits for prosecution of offences

886 Jurisdiction and procedure in respect of offences

Notices etc

887 Service of notices

888 Documents in electronic form

Interpretation

889 Meaning of “associate”

890 Minor definitions

891 Index of defined expressions

Miscellaneous and general

892 Power to make provision in consequence of changes affecting accountancy bodies

893 Consequential amendments

PART 36

TRANSPARENCY OBLIGATIONS AND RELATED MATTERS

Introductory

894 The transparency obligations directive

Transparency obligations

895 Transparency rules

896 Competent authority’s power to call for information

897 Powers exercisable in case of infringement of transparency obligation

Other matters

898 Corporate governance rules

899 Liability for false or misleading statements in certain publications

900 Exercise of powers where UK is host member state

901 Transparency obligations and related matters: minor and consequential amendments

902 Corporate governance regulations

PART 37

MISCELLANEOUS PROVISIONS

Regulation of actuaries etc

903 Grants to bodies concerned with actuarial standards etc

904 Levy to pay expenses of bodies concerned with actuarial standards etc

905 Application of provisions to Scotland and Northern Ireland

Disclosure of information under the Enterprise Act 2002

906 Disclosure of information under the Enterprise Act 2002

Expenses of winding up

907 Payment of expenses of winding up

Commonhold associations

908 Amendment of memorandum or articles of commonhold association

PART 38

NORTHERN IRELAND

- 909 Extension of Companies Acts to Northern Ireland
910 Extension of GB enactments relating to SEs
911 Extension of GB enactments relating to certain other forms of business organisation
912 Extension of enactments relating to business names

PART 39

GENERAL SUPPLEMENTARY PROVISIONS

Regulations and orders

- 913 Regulations and orders: statutory instrument
914 Regulations and orders: negative resolution procedure
915 Regulations and orders: affirmative resolution procedure
916 Regulations and orders: approval after being made
917 Regulations and orders: supplementary

Meaning of "enactment"

918 Meaning of "enactment"

Consequential and transitional provisions

- 919 Power to make consequential amendments etc
920 Repeals
921 Power to make transitional provision and savings
922 Continuity of the law

PART 40

FINAL PROVISIONS

- 923 Short title
924 Extent
925 Commencement

-
- Schedule 1 – Connected persons: references to an interest in shares or debentures
 - Schedule 2 – Specified persons, descriptions of disclosures etc for the purposes of section 648
 - Part 1 – Specified persons
 - Part 2 – Specified descriptions of disclosures
 - Part 3 – Overseas regulatory bodies
 - Schedule 3 – Amendments to Part 13A of the Companies Act 1985
 - Schedule 4 – Amendments of remaining provisions of the Companies Act 1985 relating to offences
 - Schedule 5 – Documents and information sent or supplied to a company
 - Part 1 – Introduction
 - Part 2 – Communications in hard copy form
 - Part 3 – Communications in electronic form
 - Part 4 – Other agreed forms of communication
 - Schedule 6 – Communications by a company other than a traded company
 - Part 1 – Introduction
 - Part 2 – Communications in hard copy form
 - Part 3 – Communications in electronic form
 - Part 4 – Communications by means of a website
 - Part 5 – Other agreed forms of communication
 - Part 6 – Supplementary provisions
 - Schedule 7 – Communications by a traded company
 - Part 1 – Introduction
 - Part 2 – Communications in hard copy form
 - Part 3 – Communications in electronic form
 - Part 4 – Communications by means of a website
 - Part 5 – Other agreed forms of communication
 - Part 6 – Supplementary provisions
 - Schedule 8 – Parent and subsidiary undertakings: supplementary provisions
 - Schedule 9 – Index of defined expressions
 - Schedule 10 – Recognised supervisory bodies
 - Part 1 – Grant and revocation of recognition of a supervisory body
 - Part 2 – Requirements for recognition of a supervisory body
 - Part 3 – Arrangements in which recognised supervisory bodies are required to participate
 - Schedule 11 – Recognised professional qualifications
 - Part 1 – Grant and revocation of recognition of a professional qualification
 - Part 2 – Requirements for recognition of a professional qualification
 - Schedule 12 – Arrangements in which registered third country auditors are required to participate
 - Schedule 13 – Supplementary provisions with respect to delegation order
 - Schedule 14 – Statutory auditors: consequential amendments
 - Schedule 15 – Transparency obligations and related matters: minor and consequential amendments
 - Part 1 – Amendments of the Financial Services and Markets Act 2000
 - Part 2 – Amendments of the Companies (Audit, Investigations and Community Enterprise) Act 2004
 - Schedule 16 – Repeals

PART 16

AUDIT

CHAPTER 1

REQUIREMENT FOR AUDITED ACCOUNTS

Requirement for audited accounts 5

459 Requirement for audited accounts

- (1) A company's annual accounts for a financial year must be audited in accordance with this Part unless the company –
- (a) is exempt from audit under –
 - section 461 (small companies), 10
 - section 464 (dormant companies), or
 - section 466 (charities: independent examiner's report in lieu of audit);
 - or
 - (b) is exempt from the requirements of this Part under section 472 (non-profit-making companies subject to public sector audit). 15
- (2) A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.
- (3) A company is not entitled to exemption under any of the provisions mentioned in subsection (1)(a) unless its balance sheet contains a statement by the directors to the effect that – 20
- (a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 460, and
 - (b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts. 25
- (4) The statement required by subsection (2) or (3) must appear on the balance sheet above the signature required by section 396.

460 Right of members to require audit

- (1) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 459(1)(a) may by notice under this section require it to obtain an audit of its accounts for a financial year. 30
- (2) The notice must be given by –
- (a) members holding not less in total than 10% in nominal value of the company's issued share capital, or any class of it, or
 - (b) if the company does not have a share capital, not less than 10% in number of the members of the company. 35
- (3) The notice may not be given before the financial year to which it relates and must be given not later than one month before the end of that year. 40

Exemption from audit: small companies

461 Small companies: conditions for exemption from audit

- (1) A company that meets the following conditions in respect of a financial year is exempt from the requirements of this Act relating to the audit of accounts for that year. 5
- (2) The conditions are –
- (a) that the company qualifies as a small company in relation to that year,
 - (b) that its turnover in that year is not more than £5.6 million, and
 - (c) that its balance sheet total for that year is not more than £2.8 million.
- (3) In relation to a company that is a charity, for the condition in subsection (2)(b) substitute the condition that its gross income for the year is not more than £90,000. 10
- (4) For a period which is a company’s financial year but not in fact a year the maximum figures for turnover or gross income shall be proportionately adjusted. 15
- (5) For the purposes of this section –
- (a) whether a company qualifies as a small company shall be determined in accordance with section 364(1) to (6),
 - (b) “balance sheet total” has the same meaning as in that section, and
 - (c) “gross income” means the company’s income from all sources, as shown in the company’s income and expenditure account. 20
- (6) This section has effect subject to –
- section 459(2) and (3) (requirements as to statements to be contained in balance sheet),
 - section 460 (right of members to require audit), 25
 - section 462 (companies excluded from small companies exemption), and
 - section 463 (availability of small companies exemption in case of group company).

462 Companies excluded from small companies exemption

- (1) A company is not entitled to the exemption conferred by section 461 (small companies) if it was at any time within the financial year in question – 30
- (a) a public company,
 - (b) a company that –
 - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, 35
 - (ii) carries on insurance market activity, or
 - (iii) is an appointed representative within the meaning of section 39 of that Act (other than an appointed representative whose scope of appointment is limited to activities that are not regulated activities for the purposes of this Part), 40
 - (c) a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or an employers’ association as defined in section 122 of that Act or Article 4 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)), or 45

- (d) a member of an ineligible group.
- (2) A group is ineligible if any of its members is –
 - (a) a public company,
 - (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market in an EEA State, or 5
 - (c) a person who –
 - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or
 - (ii) carries on insurance market activity.
- 463 Availability of small companies exemption in case of group company 10**
- (1) A company is not entitled to the exemption conferred by section 461 (small companies) in respect of a financial year during any part of which it was a group company unless –
 - (a) the conditions specified in subsection (2) below are met, or
 - (b) subsection (3) applies. 15
- (2) The conditions are –
 - (a) that the group –
 - (i) qualifies as a small group in relation to that financial year, and
 - (ii) was not at any time in that year an ineligible group; 20
 - (b) that the group’s aggregate turnover in that year is –
 - (i) in the case of a company registered in England and Wales or Northern Ireland that is a charity, not more than £700,000 net (or £840,000 gross),
 - (ii) in the case of a company registered in Scotland that is a charity, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10), and 25
 - (iii) in any other case, not more than £5.6 million net (or £6.72 million gross);
 - (c) that the group’s aggregate balance sheet total for that year is not more than £2.8 million net (or £3.36 million gross). 30
- (3) A company is not excluded by subsection (1) if, throughout the whole of the period or periods during the financial year when it was a group company, it was both a subsidiary undertaking and dormant.
- (4) In this section – 35
 - (a) “group company” means a company that is a parent company or a subsidiary undertaking, and
 - (b) “the group”, in relation to a group company, means that company together with all its associated undertakings.
- For this purpose undertakings are associated if one is a subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking. 40
- (5) For the purposes of this section –
 - (a) whether a group qualifies as small shall be determined in accordance with section 365 (qualifying conditions for small companies accounts regime), 45
 - (b) “ineligible group” has the meaning given by section 366(2);

- (c) a group’s aggregate turnover and aggregate balance sheet total shall be determined as for the purposes of section 365;
 - (d) “net” and “gross” have the same meaning as in that section.
- (6) The provisions mentioned in subsection (5) apply for the purposes of this section as if all the bodies corporate in the group were companies. 5

Exemption from audit: dormant companies

464 Dormant companies: conditions for exemption from audit

- (1) A company is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if –
- (a) it has been dormant since its formation, or 10
 - (b) it has been dormant since the end of the previous financial year and the following conditions are met.
- (2) The conditions are that the company –
- (a) as regards its individual accounts for the financial year in question –
 - (i) is entitled to prepare accounts in accordance with the small companies regime (see sections 363 to 366), or 15
 - (ii) would be so entitled but for having been a public company or a member of an ineligible group, and
 - (b) is not required to prepare group accounts for that year.
- (3) This section has effect subject to – 20
- section 459(2) and (3) (requirements as to statements to be contained in balance sheet),
 - section 460 (right of members to require audit), and
 - section 465 (companies excluded from dormant companies exemption).

465 Companies excluded from dormant companies exemption 25

A company is not entitled to the exemption conferred by section 464 (dormant companies) if it was at any time within the financial year in question a company that –

- (a) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, or 30
- (b) carries on insurance market activity.

Exemption from audit: certain charities

466 Small charities: independent examiner’s report in lieu of audit

- (1) A company that is a charity is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if – 35
- (a) it meets the conditions set out in subsection (2) below, and
 - (b) the directors cause a report in respect of the company’s individual accounts for that year to be prepared in accordance with section 469 and made to the company’s members.
- (2) The conditions referred to above are that – 40

- (a) the company qualifies as a small company in relation to that year;
 - (b) its balance sheet total for that year is –
 - (i) in the case of a company registered in England and Wales or Northern Ireland, not more than £2.8 million, and
 - (ii) in the case of a company registered in Scotland, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10);
 - (c) its gross income in that year is –
 - (i) in the case of a company registered in England and Wales or Northern Ireland, more than £90,000 but not more than £500,000, and
 - (ii) in the case of a company registered in Scotland, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005.
- (3) For a period which is a company’s financial year but not in fact a year the maximum figure for gross income shall be proportionately adjusted. 15
- (4) For the purposes of this section –
- (a) whether a company qualifies as a small company shall be determined in accordance with section 364(1) to (6);
 - (b) “balance sheet total” has the same meaning as in that section; and
 - (c) “gross income” means the company’s income from all sources, as shown in the company’s income and expenditure account. 20
- (5) This section has effect subject to –
- section 459(2) and (3) (requirements as to statements to be contained in balance sheet),
 - section 460 (right of members to require audit),
 - section 467 (companies excluded from report exemption), and
 - section 468 (availability of report exemption in case of group company). 25

467 Companies excluded from report exemption

- (1) A company is not entitled to the exemption conferred by section 466 (charities: independent examiner’s report in lieu of audit) if it was at any time within the financial year in question –
- (a) a public company,
 - (b) a company that –
 - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, 35
 - (ii) carries on insurance market activity, or
 - (iii) is an appointed representative within the meaning of section 39 of that Act (other than an appointed representative whose scope of appointment is limited to activities that are not regulated activities for the purposes of this Part), 40
 - (c) a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or an employers’ association as defined in section 122 of that Act or Article 4 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)), or
 - (d) a member of an ineligible group. 45

- (2) A group is ineligible if any of its members is –
- (a) a public company,
 - (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market in an EEA State, or
 - (c) a person who – 5
 - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or
 - (ii) carries on insurance market activity.

468 Availability of report exemption in case of group company

- (1) A company is not entitled to the exemption conferred by section 466 (charities: independent examiner’s report in lieu of audit) in respect of a financial year during any part of which it was a group company unless – 10
- (a) the conditions specified in subsection (2) below are met, or
 - (b) subsection (3) applies.
- (2) The conditions are – 15
- (a) that the group –
 - (i) qualifies as a small group in relation to that financial year, and
 - (ii) was not at any time in that year an ineligible group;
 - (b) that the group’s aggregate turnover in that year is – 20
 - (i) in the case of a company registered in England and Wales or Northern Ireland, not more than £700,000 net (or £840,000 gross), and
 - (ii) in the case of a company registered in Scotland, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10); 25
 - (c) that the group’s aggregate balance sheet total for that year is –
 - (i) in the case of a company registered in England and Wales or Northern Ireland, not more than £2.8 million net (or £3.36 million gross), and
 - (ii) in the case of a company registered in Scotland, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005. 30
- (3) A company is not excluded by subsection (1) if, throughout the whole of the period or periods during the financial year when it was a group company, it was both a subsidiary undertaking and dormant. 35
- (4) In this section –
- (a) “group company” means a company that is a parent company or a subsidiary undertaking, and
 - (b) “the group”, in relation to a group company, means that company together with all its associated undertakings. 40
- For this purpose undertakings are associated if one is a subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking.
- (5) For the purposes of this section –
- (a) whether a group qualifies as a small group shall be determined in accordance with section 365(2) (conditions for small companies accounts regime), 45
 - (b) “ineligible group” has the meaning given by section 366,

- (c) a group’s aggregate turnover and aggregate balance sheet total shall be determined as for the purposes of section 365, and
 - (d) “net” and “gross” have the same meaning as in that section.
- (6) The provisions mentioned in subsection (5) apply for the purposes of this section as if all the bodies corporate in the group were companies. 5

469 The independent examiner’s report

- (1) The report required for the purposes of section 466 (small charities: independent examiner’s report in lieu of audit) is a report that is –
- (a) prepared by a person (the “independent examiner”) who meets the requirements of section 470, and 10
 - (b) complies with the provisions under subsections (2) and (3).
- (2) In the case of a company registered in England and Wales or Northern Ireland, the report must comply with the requirements for independent examination of a charity’s accounts under section 44(1)(c) of the Charities Act 1993 (c. 10).
- (3) In the case of a company registered in Scotland, the report must comply with such requirements for independent examination of a charity’s accounts as may be specified by regulations made under section 44(4)(g) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10). 15

470 The independent examiner

- (1) In the case of a company registered in England and Wales or Northern Ireland, the independent examiner must be a person meeting the requirements of section 43(a) of the Charities Act 1993. 20
- (2) In the case of a company registered in Scotland, the independent examiner must be a person meeting such requirements for an independent examiner of a charity’s accounts as may be specified by regulations made under section 44(4)(g) of the Charities and Trustee Investment (Scotland) Act 2005. 25

471 Rights of independent examiner

Where the directors of a company take advantage of the exemption conferred by section 466 (small charities: independent examiner’s report in lieu of audit), sections 489 to 491 (auditor’s rights to information) have effect in relation to the independent examiner as they would in relation to an auditor. 30

Companies subject to public sector audit

472 Non-profit-making companies subject to public sector audit

- (1) The requirements of this Part as to audit of accounts do not apply to a company for a financial year if it is non-profit-making and its accounts – 35
- (a) are subject to audit –
 - (i) by the Comptroller and Auditor General by virtue of an order under section 25(6) of the Government Resources and Accounts Act 2000 (c. 20), or

-
- (ii) by the Auditor General for Wales by virtue of section 96, or an order under section 144, of the Government of Wales Act 1998 (c. 38);
- (b) are accounts –
- (i) in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies, or 5
- (ii) that are subject to audit by the Auditor General for Scotland by virtue of an order under section 473 (Scottish public sector companies: audit by Auditor General for Scotland); or 10
- (c) are subject to audit by the Comptroller and Auditor General for Northern Ireland by virtue of an order under Article 5(3) of the Audit and Accountability (Northern Ireland) Order 2003 (S.I. 2003/418 (N.I. 5)).
- (2) In the case of a company that is a parent company or a subsidiary undertaking, subsection (1) applies only if every group undertaking is non-profit-making. 15
- (3) In this section “non-profit-making” has the same meaning as in Article 48 of the Treaty establishing the European Community.
- (4) This section has effect subject to section 459(2) (balance sheet to contain statement that company entitled to exemption under this section). 20
- 473 Scottish public sector companies: audit by Auditor General for Scotland**
- (1) The Scottish Ministers may by order provide for the accounts of a company having its registered office in Scotland to be audited by the Auditor General for Scotland.
- (2) An order under subsection (1) may be made in relation to a company only if it appears to the Scottish Ministers that the company – 25
- (a) exercises in or as regards Scotland functions of a public nature none of which relate to reserved matters (within the meaning of the Scotland Act 1998 (c. 46)), or
- (b) is entirely or substantially funded from a body having accounts falling within paragraph (a) or (b) of subsection (3). 30
- (3) Those accounts are –
- (a) accounts in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies, 35
- (b) accounts which are subject to audit by the Auditor General for Scotland by virtue of an order under this section.
- (4) An order under subsection (1) may make such supplementary or consequential provision (including provision amending an enactment) as the Scottish Ministers think expedient. 40
- (5) An order under subsection (1) shall not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, the Scottish Parliament.

General power of amendment by regulations

474 General power of amendment by regulations

- (1) The Secretary of State may by regulations amend this Chapter by adding, altering or repealing provisions.
- (2) The regulations may make consequential amendments or repeals in other provisions of this Act, or in other enactments. 5
- (3) Regulations under this section imposing new requirements, or rendering existing requirements more onerous, are subject to affirmative resolution procedure.
- (4) Other regulations under this section are subject to negative resolution procedure. 10

CHAPTER 2

APPOINTMENT OF AUDITORS

Private companies

475 Appointment of auditors of private company: general

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- (1) An auditor or auditors of a private company must be appointed for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.
- (2) For each financial year for which an auditor or auditors is or are to be appointed (other than the company’s first financial year), the appointment must be made before the end of the period of 28 days beginning with –
 - (a) the end of the time allowed for sending out copies of the company’s annual accounts and reports for the previous financial year (see section 406), or
 - (b) if earlier, the day on which copies of the company’s annual accounts and reports for the previous financial year are sent out under section 405. 25This is the “period for appointing auditors”.
- (3) The directors may appoint an auditor or auditors of the company –
 - (a) at any time before the company’s first period for appointing auditors, 30
 - (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company’s next period for appointing auditors, or
 - (c) to fill a casual vacancy in the office of auditor.
- (4) The members may appoint an auditor or auditors by ordinary resolution –
 - (a) during a period for appointing auditors, 35
 - (b) if the company should have appointed an auditor or auditors during a period for appointing auditors but failed to do so, or
 - (c) where the directors had power to appoint under subsection (3) but have failed to make an appointment. 40
- (5) An auditor or auditors of a private company may only be appointed –

- (a) in accordance with this section, or
 - (b) in accordance with section 476 (default power of Secretary of State).
- This is without prejudice to any deemed re-appointment under section 477.

476	Appointment of auditors of private company: default power of Secretary of State	5
(1)	If a private company fails to appoint an auditor or auditors in accordance with section 475, the Secretary of State may appoint one or more persons to fill the vacancy.	
(2)	Where subsection (2) of that section applies and the company fails to make the necessary appointment before the end of the period for appointing auditors, the company must within one week of the end of that period give notice to the Secretary of State of his power having become exercisable.	10
(3)	If a company fails to give the notice required by this section, an offence is committed by –	
	(a) the company, and	15
	(b) every officer of the company who is in default.	
(4)	A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.	20
477	Term of office of auditors of private company	
(1)	An auditor or auditors of a private company hold office in accordance with the terms of their appointment, subject to the requirements that –	
	(a) they do not take office until any previous auditor or auditors cease to hold office, and	25
	(b) they cease to hold office at the end of the next period for appointing auditors unless re-appointed.	
(2)	Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless –	30
	(a) he was appointed by the directors, or	
	(b) the company’s articles require actual re-appointment, or	
	(c) the deemed re-appointment is prevented by the members under section 478, or	
	(d) the members have resolved that he should not be re-appointed, or	35
	(e) the directors have resolved that no auditor or auditors should be appointed for the financial year in question.	
(3)	This is without prejudice to the provisions of this Part as to removal and resignation of auditors.	
(4)	No account shall be taken of any loss of the opportunity of deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.	40

478 Prevention by members of deemed re-appointment of auditor

- (1) An auditor of a private company is not deemed to be re-appointed under section 477(2) if the company has received notices under this section from members who hold at least the requisite percentage of the total voting rights of all members who would be entitled to vote on a resolution that the auditor should not be re-appointed. 5
- (2) The “requisite percentage” is 5%, or such lower percentage as is specified for this purpose in the company’s articles.
- (3) A notice under this section – 10
 - (a) may be in hard copy or electronic form,
 - (b) must be authenticated by the person or persons giving it, and
 - (c) must be received by the company before the end of the accounting reference period immediately preceding the time when the deemed re-appointment would have effect.

Public companies 15

479 Appointment of auditors of public company: general

- (1) An auditor or auditors of a public company must be appointed for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.
- (2) For each financial year for which an auditor or auditors is or are to be appointed (other than the company’s first financial year), the appointment must be made before the end of the accounts meeting of the company at which the company’s annual accounts and reports for the previous financial year are laid. 20
- (3) The directors may appoint an auditor or auditors of the company – 25
 - (a) at any time before the company’s first accounts meeting;
 - (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company’s next accounts meeting;
 - (c) to fill a casual vacancy in the office of auditor. 30
- (4) The members may appoint an auditor or auditors by ordinary resolution –
 - (a) at an accounts meeting;
 - (b) if the company should have appointed an auditor or auditors at an accounts meeting but failed to do so;
 - (c) where the directors had power to appoint under subsection (3) but have failed to make an appointment. 35
- (5) An auditor or auditors of a public company may only be appointed –
 - (a) in accordance with this section, or
 - (b) in accordance with section 480 (default power of Secretary of State).

- 480 Appointment of auditors of public company: default power of Secretary of State**
- (1) If a public company fails to appoint an auditor or auditors in accordance with section 479, the Secretary of State may appoint one or more persons to fill the vacancy. 5
- (2) Where subsection (2) of that section applies and the company fails to make the necessary appointment before the end of the accounts meeting, the company must within one week of the end of that meeting give notice to the Secretary of State of his power having become exercisable.
- (3) If a company fails to give the notice required by this section, an offence is committed by – 10
- (a) the company, and
- (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 15
- 481 Term of office of auditors of public company**
- (1) The auditor or auditors of a public company hold office in accordance with the terms of their appointment, subject to the requirements that – 20
- (a) they do not take office until the previous auditor or auditors have ceased to hold office, and
- (b) they cease to hold office at the conclusion of the accounts meeting next following their appointment, unless re-appointed.
- (2) This is without prejudice to the provisions of this Part as to removal and resignation of auditors. 25

General provisions

- 482 Fixing of auditor’s remuneration**
- (1) The remuneration of an auditor appointed by the members of a company must be fixed by the members by ordinary resolution or in such manner as the members may by ordinary resolution determine. 30
- (2) The remuneration of an auditor appointed by the directors of a company must be fixed by the directors.
- (3) The remuneration of an auditor appointed by the Secretary of State must be fixed by the Secretary of State. 35
- (4) For the purposes of this section “remuneration” includes sums paid in respect of expenses.
- (5) This section applies in relation to benefits in kind as to payments of money.

483 Disclosure of terms of audit appointment

- (1) The Secretary of State may make provision by regulations for securing the disclosure of the terms on which a company’s auditor is appointed, remunerated or performs his duties.
Nothing in the following provisions of this section affects the generality of this power. 5
- (2) The regulations may –
- (a) require disclosure of –
 - (i) a copy of any terms that are in writing and
 - (ii) a written memorandum setting out any terms that are not in writing; 10
 - (b) require disclosure to be at such times, in such places and by such means as are specified in the regulations;
 - (c) require the place and means of disclosure to be stated –
 - (i) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts), 15
 - (ii) in the directors’ report, or
 - (iii) in the auditor’s report on the company’s annual accounts.
- (3) The provisions of this section apply to a variation of the terms mentioned in subsection (1) as they apply to the original terms. 20
- (4) Regulations under this section are subject to affirmative resolution procedure.

484 Disclosure of services provided by auditor or associates and related remuneration

- (1) The Secretary of State may make provision by regulations for securing the disclosure of – 25
- (a) the nature of any services provided for a company by the company’s auditor (whether in his capacity as auditor or otherwise) or by his associates;
 - (b) the amount of any remuneration received or receivable by a company’s auditor, or his associates, in respect of any such services. 30
- Nothing in the following provisions of this section affects the generality of this power.
- (2) The regulations may provide –
- (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described); 35
 - (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described); 40
 - (c) for the disclosure of separate amounts so received or receivable by the company’s auditor or any of his associates, or of aggregate amounts so received or receivable by all or any of those persons.
- (3) The regulations may –
- (a) provide that “remuneration” includes sums paid in respect of expenses; 45

- (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value;
- (c) apply to services provided for associates of a company as well as to those provided for a company; 5
- (d) define “associate” in relation to an auditor and a company respectively.
- (4) The regulations may provide that any disclosure required by the regulations is to be made –
 - (a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts), 10
 - (b) in the directors’ report, or
 - (c) in the auditor’s report on the company’s annual accounts.
- (5) If the regulations provide that any such disclosure is to be made as mentioned in subsection (4)(a) or (b), the regulations may require the auditor to supply the directors of the company with any information necessary to enable the disclosure to be made. 15
- (6) Regulations under this section are subject to negative resolution procedure.

CHAPTER 3

FUNCTIONS OF AUDITOR 20

Auditor’s report

485 Auditor’s report on company’s annual accounts

- (1) A company’s auditor must make a report to the company’s members on all annual accounts of the company of which copies are, during his tenure of office – 25
 - (a) in the case of a private company, to be sent out to members under section 405;
 - (b) in the case of a public company, to be laid before the company in general meeting under section 421.
- (2) The auditor’s report must include – 30
 - (a) an introduction identifying the annual accounts that are the subject of the audit and the financial reporting framework that has been applied in their preparation, and
 - (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted. 35
- (3) The report must state clearly whether, in the auditor’s opinion, the annual accounts –
 - (a) give a true and fair view –
 - (i) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year, 40
 - (ii) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year,

- (iii) in the case of group accounts, of the state of affairs as at the end of the financial year and of the profit or loss for the financial year of the undertakings included in the consolidation as a whole, so far as concerns members of the company;
 - (b) have been properly prepared in accordance with the relevant financial reporting framework; and 5
 - (c) have been prepared in accordance with the requirements of this Act (and, where applicable, Article 4 of the IAS Regulation).
- Expressions used in this subsection that are defined for the purposes of Part 15 (see section 458) have the same meaning as in that Part. 10
- (4) The auditor’s report –
 - (a) must be either unqualified or qualified, and
 - (b) must include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the report.
- 486 Auditor’s report on directors’ report 15**

The auditor must state in his report on the company’s annual accounts whether in his opinion the information given in the directors’ report for the financial year for which the accounts are prepared is consistent with those accounts.
- 487 Auditor’s report on auditable part of directors’ remuneration report**
 - (1) If the company is a quoted company, the auditor, in his report on the company’s annual accounts for the financial year, must – 20
 - (a) report to the company’s members on the auditable part of the directors’ remuneration report, and
 - (b) state whether in his opinion that part of the directors’ remuneration report has been properly prepared in accordance with this Act. 25
 - (2) For the purposes of this Part, “the auditable part” of a directors’ remuneration report is the part identified as such by regulations under section 403.

Duties and rights of auditors

- 488 Duties of auditor**
 - (1) A company’s auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to – 30
 - (a) whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from branches not visited by him, and
 - (b) whether the company’s individual accounts are in agreement with the accounting records and returns, and 35
 - (c) in the case of a quoted company, whether the auditable part of the company’s directors’ remuneration report is in agreement with the accounting records and returns.
 - (2) If the auditor is of opinion – 40
 - (a) that adequate accounting records have not been kept, or that returns adequate for their audit have not been received from branches not visited by him, or

- (b) that the company’s individual accounts are not in agreement with the accounting records and returns, or
- (c) in the case of a quoted company, that the auditable part of its directors’ remuneration report is not in agreement with the accounting records and returns, 5
- the auditor shall state that fact in his report.
- (3) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.
- (4) If— 10
- (a) the requirements of regulations under section 394 (disclosure of directors’ benefits: remuneration, pensions and compensation for loss of office) are not complied with in the annual accounts, or
- (b) in the case of a quoted company, the requirements of regulations under section 403 as to information forming the auditable part of the directors’ remuneration report are not complied with in that report, 15
- the auditor must include in his report, so far as he is reasonably able to do so, a statement giving the required particulars.
- (5) If the directors of the company have prepared accounts and reports in accordance with the small companies regime and in the auditor’s opinion they were not entitled so to do, the auditor shall state that fact in his report. 20

489 Auditor’s general right to information

- (1) An auditor of a company –
- (a) has a right of access at all times to the company’s books, accounts and vouchers (in whatever form they are held), and 25
- (b) may require any of the following persons to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.
- (2) Those persons are –
- (a) any officer or employee of the company; 30
- (b) any person holding or accountable for any of the company’s books, accounts or vouchers;
- (c) any subsidiary undertaking of the company which is a body corporate incorporated in the United Kingdom;
- (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking; 35
- (e) any person who fell within any of paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate. 40
- (3) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 491.
- (4) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings. 45

490 Auditor’s right to information from overseas subsidiaries

- (1) Where a parent company has a subsidiary undertaking that is not a body corporate incorporated in the United Kingdom, the auditor of the parent company may require it to obtain from any of the following persons such information or explanations as he may reasonably require for the purposes of his duties as auditor. 5
- (2) Those persons are—
 - (a) the undertaking;
 - (b) any officer, employee or auditor of the undertaking;
 - (c) any person holding or accountable for any of the undertaking’s books, accounts or vouchers; 10
 - (d) any person who fell within paragraph (b) or (c) at a time to which the information or explanations relates or relate.
- (3) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person concerned. 15
- (4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 491.
- (5) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings. 20

491 Auditor’s rights to information: offences

- (1) A person commits an offence who knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—
 - (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 489, and 25
 - (b) is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both); 30
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both). 35
- (3) A person who fails to comply with a requirement under section 489 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanations. 40
- (4) If a parent company fails to comply with section 490, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.

- (5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Nothing in this section affects any right of an auditor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 489 or 490. 5

492 Auditor's rights in relation to resolutions and meetings

- (1) In relation to a written resolution proposed to be agreed to by a private company, the company's auditor is entitled to receive all such communications relating to the resolution as, by virtue of any provision of Chapter 2 of Part 13 of this Act, are required to be supplied to a member of the company. 10
- (2) A company's auditor is entitled –
- (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive,
 - (b) to attend any general meeting of the company, and
 - (c) to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor. 15
- (3) Where the auditor is a firm, the right to attend or be heard at a meeting is exercisable by an individual authorised by the firm in writing to act as its representative at the meeting.

Signature of auditor's report 20

493 Signature of auditor's report

- (1) The auditor's report must state the name of the auditor and be signed and dated.
- (2) Where the auditor is an individual, the report must be signed by him.
- (3) Where the auditor is a firm, the report must be signed by the senior statutory auditor in his own name, for and on behalf of the auditor. 25

494 Senior statutory auditor

- (1) The senior statutory auditor means the individual identified by the firm as senior statutory auditor in relation to the audit in accordance with –
- (a) standards issued by the European Commission, or 30
 - (b) if there is no applicable standard so issued, any relevant guidance issued by –
 - (i) the Secretary of State, or
 - (ii) a body appointed by order of the Secretary of State.
- (2) The person identified as senior statutory auditor must be eligible for appointment as auditor of the company in question (see Chapter 2 of Part 35 of this Act). 35
- (3) The senior statutory auditor is not, by reason of being named or identified as senior statutory auditor or by reason of his having signed the auditor's report, subject to any civil liability to which he would not otherwise be subject. 40

- (4) An order appointing a body for the purpose of subsection (1)(b)(ii) is subject to negative resolution procedure.

495 Names to be stated in published copies of auditor’s report

- (1) Every copy of the auditor’s report that is published by or on behalf of the company must – 5
- (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
 - (b) if the conditions in section 496 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section. 10
- (2) For the purposes of this section a company is regarded as publishing the report if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.
- (3) If a copy of the auditor’s report is published without the statement required by this section, an offence is committed by – 15
- (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 20

496 Circumstances in which names may be omitted

- (1) The auditor’s name and, where the auditor is a firm, the name of the person who signed the report as senior statutory auditor, may be omitted from – 25
- (a) published copies of the report, and
 - (b) the copy of the report delivered to the registrar under Chapter 10 of Part 15 (filing of accounts and reports),
- if the following conditions are met.
- (2) The conditions are that the company –
- (a) considering on reasonable grounds that statement of the name would create or be likely to create a serious risk that the auditor or senior statutory auditor, or any other person, would be subject to violence or intimidation, has resolved that the name should not be stated, and 30
 - (b) has given notice of the resolution to the Secretary of State, stating – 35
 - (i) the name and registered number of the company,
 - (ii) the financial year of the company to which the report relates, and
 - (iii) the name of the auditor and (where the auditor is a firm) the name of the person who signed the report as senior statutory auditor.

*Offences in connection with auditor’s report***497 Offences in connection with auditor’s report**

- (1) A person to whom this section applies commits an offence if he knowingly or recklessly causes a report under section 485 (auditor’s report on company’s annual accounts) to include any matter that is misleading, false or deceptive in a material particular. 5
- (2) A person to whom this section applies commits an offence if he knowingly or recklessly causes such a report to omit a statement required by – 10
- (a) section 488(2)(b) (statement that company’s accounts do not agree with accounting records and returns),
 - (b) section 488(3) (statement that necessary information and explanations not obtained), or
 - (c) section 488(5) (statement that directors wrongly took advantage of exemption from obligation to prepare group accounts).
- (3) This section applies to – 15
- (a) where the auditor is an individual, that individual and any employee or agent of his who is eligible for appointment as auditor of the company;
 - (b) where the auditor is a firm, any director, member, employee or agent of the firm who is eligible for appointment as auditor of the company. 20
- (4) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

498 Guidance for regulatory and prosecuting authorities: England, Wales and Northern Ireland 25

- (1) The Secretary of State may issue guidance for the purpose of helping relevant regulatory and prosecuting authorities to determine how they should carry out their functions in cases where behaviour occurs that – 30
- (a) appears to involve the commission of an offence under section 497 (offences in connection with auditor’s report), and
 - (b) has been, is being or may be investigated pursuant to arrangements – 35
 - (i) under paragraph 15 of Schedule 10 (investigation of complaints against auditors and supervisory bodies), or
 - (ii) of a kind mentioned in paragraph 24 of that Schedule (independent investigation for disciplinary purposes of public interest cases).
- (2) The Secretary of State must obtain the consent of the Attorney General before issuing any such guidance.
- (3) In this section “relevant regulatory and prosecuting authorities” means – 40
- (a) supervisory bodies within the meaning of Part 35 of this Act,
 - (b) bodies to which the Secretary of State may make grants under section 16(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (bodies concerned with accounting standards etc), 45

- (c) the Director of the Serious Fraud Office,
 - (d) the Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland, and
 - (e) the Secretary of State.
- (4) This section does not apply to Scotland. 5

499 Guidance for regulatory authorities: Scotland

- (1) The Lord Advocate may issue guidance for the purpose of helping relevant regulatory authorities to determine how they should carry out their functions in cases where behaviour occurs that –
- (a) appears to involve the commission of an offence under section 497 (offences in connection with auditor’s report), and 10
 - (b) has been, is being or may be investigated pursuant to arrangements –
 - (i) under paragraph 15 of Schedule 10 (investigation of complaints against auditors and supervisory bodies), or
 - (ii) of a kind mentioned in paragraph 24 of that Schedule (independent investigation for disciplinary purposes of public interest cases). 15
- (2) The Lord Advocate must consult the Secretary of State before issuing any such guidance.
- (3) In this section “relevant regulatory authorities” means – 20
- (a) supervisory bodies within the meaning of Part 35 of this Act,
 - (b) bodies to which the Secretary of State may make grants under section 16(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (bodies concerned with accounting standards etc), and 25
 - (c) the Secretary of State.
- (4) This section applies only to Scotland.

CHAPTER 4

REMOVAL, RESIGNATION, ETC OF AUDITORS

Removal of auditor 30

500 Resolution removing auditor from office

- (1) The members of a company may by ordinary resolution at any time remove an auditor from office.
- (2) This power is exercisable only in accordance with section 501 (special notice of resolution to remove auditor). 35
- (3) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination –
- (a) of his appointment as auditor, or
 - (b) of any appointment terminating with that as auditor.

- (4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

501 Special notice required for resolution removing auditor from office

- (1) Special notice is required for a resolution at a general meeting of a company removing an auditor from office. 5
- (2) On receipt of notice of such an intended resolution the company must immediately send a copy of it to the person proposed to be removed.
- (3) The auditor proposed to be removed may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company. 10
- (4) The company must (unless the representations are received by it too late for it to do so) –
- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
 - (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent. 15
- (5) If a copy of any such representations is not sent out as required because received too late or because of the company’s default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting. 20
- (6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter. 25
- The court may order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

502 Notice to registrar of resolution removing auditor from office

- (1) Where a resolution is passed under section 500 (resolution removing auditor from office), the company must give notice of that fact to the registrar within 14 days. 30
- (2) If a company fails to give the notice required by this section, an offence is committed by –
- (a) the company, and
 - (b) every officer of it who is in default. 35
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 40

503 Rights of auditor who has been removed from office

- (1) An auditor who has been removed by resolution under section 500 has, notwithstanding his removal, the rights conferred by section 492(2) in relation to any general meeting of the company –
 - (a) at which his term of office would otherwise have expired, or 5
 - (b) at which it is proposed to fill the vacancy caused by his removal.
- (2) In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Failure to re-appoint auditor 10

504 Failure to re-appoint auditor: special procedure required for written resolution

- (1) This section applies where a resolution is proposed as a written resolution of a private company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has expired, or is to expire, at the end of the period for appointing auditors. 15
- (2) The following provisions apply if –
 - (a) no period for appointing auditors has ended since the outgoing auditor ceased to hold office, or
 - (b) such a period has ended and an auditor or auditors should have been appointed but were not. 20
- (3) The company must send a copy of the proposed resolution to the person proposed to be appointed and to the outgoing auditor.
- (4) The outgoing auditor may, within 14 days after receiving the notice, make with respect to the proposed resolution representations in writing to the company (not exceeding a reasonable length) and request their circulation to members of the company. 25
- (5) The company must circulate the representations together with the copy or copies of the resolution circulated in accordance with section 274 (resolution proposed by directors) or section 276 (resolution proposed by members). 30
- (6) Where subsection (5) applies –
 - (a) the period allowed under section 276(3) for service of copies of the proposed resolution is 28 days instead of 21 days, and
 - (b) the provisions of section 276(6) and (7) (offences) apply in relation to a failure to comply with that subsection as in relation to a default in complying with that section. 35
- (7) Copies of the representations need not be circulated if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter. 40
The court may order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

- (8) If any requirement of this section is not complied with, the resolution is ineffective.

505 Failure to re-appoint auditor: special notice required for resolution at general meeting

- (1) This section applies to a resolution at a general meeting of a company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has ended, or is to end – 5
- (a) in the case of a private company, at the end of the period for appointing auditors;
- (b) in the case of a public company, at the end of the next accounts meeting. 10
- (2) Special notice is required of such a resolution if –
- (a) in the case of a private company –
- (i) no period for appointing auditors has ended since the outgoing auditor ceased to hold office, or
- (ii) such a period has ended and an auditor or auditors should have been appointed but were not; 15
- (b) in the case of a public company –
- (i) there has been no accounts meeting of the company since the outgoing auditor ceased to hold office, or
- (ii) there has been an accounts meeting at which an auditor or auditors should have been appointed but were not. 20
- (3) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be appointed and to the outgoing auditor.
- (4) The outgoing auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company. 25
- (5) The company must (unless the representations are received by it too late for it to do so) –
- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and 30
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (6) If a copy of any such representations is not sent out as required because received too late or because of the company’s default, the outgoing auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting. 35
- (7) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter. 40
- The court may order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the outgoing auditor, notwithstanding that he is not a party to the application. 45

Resignation of auditor

506 Resignation of auditor

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.
- (2) The notice is not effective unless it is accompanied by the statement required by section 509. 5
- (3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

507 Notice to registrar of resignation of auditor 10

- (1) Where an auditor resigns the company must within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies.
- (2) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default. 15
- (3) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum. 20

508 Rights of resigning auditor

- (1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation (see section 509). 25
- (2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting. 30
- (3) He may request the company to circulate to its members –
 - (a) before the meeting convened on his requisition, or
 - (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation, 35a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (4) The company must (unless the statement is received too late for it to comply) –
 - (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and 40
 - (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

- (5) The directors must within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given.
- (6) If default is made in complying with subsection (5), every director who failed to take all reasonable steps to secure that a meeting was convened commits an offence. 5
- (7) A person guilty of an offence under this section is liable –
 (a) on conviction on indictment, to a fine;
 (b) on summary conviction to a fine not exceeding the statutory maximum.
- (8) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company’s default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting. 10
- (9) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter. 15
 The court may order the company’s costs (in Scotland, expenses) on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application. 20
- (10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 492(2) in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b) above. 25
 In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Statement by auditor on ceasing to hold office

509 Statement by auditor to be deposited with company

- (1) Where an auditor of an unquoted company ceases for any reason to hold office, he must deposit at the company’s registered office a statement of the circumstances connected with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company. 30
 35
- (2) If he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, he must deposit at the company’s registered office a statement to that effect.
- (3) Where an auditor of a quoted company ceases for any reason to hold office, he must deposit at the company’s registered office a statement of the circumstances connected with his ceasing to hold office. 40
- (4) The statement required by this section must be deposited –
 (a) in the case of resignation, along with the notice of resignation;

- (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor;
 - (c) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence. 5
- (6) In proceedings for such an offence 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.
- (7) A person guilty of an offence under this section is liable – 10
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- 510 Company’s duties in relation to statement**
- (1) This section applies where the statement deposited under section 509 states the circumstances connected with the auditor’s ceasing to hold office. 15
- (2) The company must within 14 days of the deposit of the statement either –
 - (a) send a copy of it to every person who under section 405 is entitled to be sent copies of the accounts, or
 - (b) apply to the court. 20
- (3) If it applies to the court, the company must notify the auditor of the application.
- (4) If the court is satisfied that the auditor is using the provisions of section 509 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 (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, even if he is not a party to the application. 25

The company must within 14 days of the court’s decision send to the persons mentioned in subsection (2)(a) a statement setting out the effect of the order. 30
- (5) If no such direction is made the company must send copies of the statement to the persons mentioned in subsection (2)(a) within 14 days of the court’s decision or, as the case may be, of the discontinuance of the proceedings.
- (6) In the event of default in complying with this section an offence is committed by every officer of the company who is in default. 35
- (7) In proceedings for such an offence 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.
- (8) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum. 40

511 Copy of statement to be sent to registrar

- (1) Unless within 21 days beginning with the day on which he deposited the statement under section 509 the auditor receives notice of an application to the court under section 510, he must within a further seven days send a copy of the statement to the registrar. 5
- (2) If an application to the court is made under section 510 and the auditor subsequently receives notice under subsection (5) of that section, he must within seven days of receiving the notice send a copy of the statement to the registrar.
- (3) An auditor who fails to comply with subsection (1) or (2) commits an offence. 10
- (4) In proceedings for such an offence 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.
- (5) A person guilty of an offence under this section is liable – 15
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

512 Duty of auditor to notify appropriate audit authority

- (1) Where – 20
 - (a) in the case of a major audit, an auditor ceases for any reason to hold office, or
 - (b) in the case of an audit that is not a major audit, an auditor ceases to hold office before the end of his term of office,

the auditor ceasing to hold office must notify the appropriate audit authority.
- (2) The notice must – 25
 - (a) inform the appropriate audit authority that he has ceased to hold office, and
 - (b) be accompanied by a copy of the statement deposited by him at the company's registered office in accordance with section 509.
- (3) If the statement so deposited is to the effect that he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, the notice must also be accompanied by a statement of the reasons for his ceasing to hold office. 30
- (4) The auditor must comply with this section – 35
 - (a) in the case of a major audit, at the same time as he deposits a statement at the company's registered office in accordance with section 509;
 - (b) in the case of an audit that is not a major audit, at such time (not being earlier than the time mentioned in paragraph (a)) as the appropriate audit authority may require. 40
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (6) If that person is a firm an offence is committed by –
 - (a) the firm, and

- (b) every officer of the firm who is in default.
 - (7) In proceedings for an offence under this section 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.
 - (8) A person guilty of an offence under this section is liable – 5
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- 513 Duty of company to notify appropriate audit authority**
- (1) Where an auditor ceases to hold office before the end of his term of office, the company must notify the appropriate audit authority. 10
 - (2) The notice must –
 - (a) inform the appropriate audit authority that the auditor has ceased to hold office, and
 - (b) be accompanied by – 15
 - (i) a statement by the company of the reasons for his ceasing to hold office, or
 - (ii) if the copy of the statement deposited by the auditor at the company’s registered office in accordance with section 509 contains a statement of circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, a copy of that statement. 20
 - (3) The company must give notice under this section not later than 14 days after the date on which the auditor’s statement is deposited at the company’s registered office in accordance with section 509. 25
 - (4) If a company fails to comply with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
 - (5) In proceedings for such an offence 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. 30
 - (6) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum. 35
- 514 Information to be given to accounting authorities**
- (1) The appropriate audit authority on receiving notice under section 512 or 513 of an auditor’s ceasing to hold office –
 - (a) must inform the accounting authorities, and
 - (b) may if it thinks fit forward to those authorities a copy of the statement or statements accompanying the notice. 40
 - (2) The accounting authorities are –
 - (a) the Secretary of State, and

- (b) any person authorised by the Secretary of State for the purposes of section 440 (revision of defective accounts: persons authorised to apply to court).
- (3) If either of the accounting authorities is also the appropriate audit authority it is only necessary to comply with this section as regards any other accounting authority. 5
- (4) If the court has made an order under section 510(4) directing that copies of the statement need not be sent out by the company, sections 444 and 445 (restriction on further disclosure) apply in relation to the copies sent to the accounting authorities as they apply to information obtained under section 443 (power to require documents etc). 10
- 515 Meaning of “appropriate audit authority” and “major audit”**
- (1) In sections 512, 513 and 514 “appropriate audit authority” means –
- (a) in the case of a major audit, the Secretary of State or the body to whom the Secretary of State has delegated functions under section 881 or 882 of this Act; 15
- (b) in the case of an audit that is not a major audit, the relevant supervisory body.
- (2) In sections 512 and this section “major audit” means a statutory audit conducted in respect of – 20
- (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c. 8)), or
- (b) any other person in whose financial condition there is a major public interest. 25
- (3) In determining whether an audit is a major audit within subsection (2)(b), regard shall be had to any guidance issued by any of the authorities mentioned in subsection (1).

Supplementary

- 516 Effect of casual vacancies** 30
- If an auditor ceases to hold office for any reason, any surviving or continuing auditor or auditors may continue to act.

CHAPTER 5

QUOTED COMPANIES: RIGHT OF MEMBERS TO RAISE AUDIT CONCERNS AT ACCOUNTS MEETING 35

- 517 Members’ power to require website publication of audit concerns**
- (1) The members of a quoted company may require the company to publish on a website a statement setting out any matter relating to –
- (a) the audit of the company’s accounts (including the auditor’s report and the conduct of the audit) that are to be laid before the next accounts meeting, or 40

- (b) any circumstances connected with an auditor of the company ceasing to hold office since the previous accounts meeting,
that the members propose to raise at the next accounts meeting of the company.
- (2) A company is required to do so once it has received requests to that effect from – 5
- (a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote (excluding any voting rights attached to any shares in the company held as treasury shares), or
- (b) at least 100 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least £100. 10
- (3) In subsection (2) a “relevant right to vote” means a right to vote at the accounts meeting.
- (4) A request – 15
- (a) may be sent to the company in hard copy or electronic form,
- (b) must identify the statement to which it relates,
- (c) must be authenticated by the person or persons making it, and
- (d) must be received by the company at least one week before the meeting to which it relates. 20
- (5) A quoted company is not required to place on a website a statement under this section if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused.
- (6) The court may order the members requesting website publication to pay the whole or part of the company’s costs (in Scotland, expenses) on such an application, even if they are not parties to the application. 25

518 Requirements as to website availability

- (1) The following provisions apply for the purposes of section 517 (website publication of members’ statement of audit concerns). 30
- (2) The information must be made available on a website that –
- (a) is maintained by or on behalf of the company, and
- (b) identifies the company in question.
- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted. 35
- (4) The statement –
- (a) must be made available within three working days of the company being required to publish it on a website, and
- (b) must be kept available until after the meeting to which it relates. 40
- (5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if –
- (a) the information is made available on the website for part of that period, and

- (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

519 Website publication: company’s supplementary duties

- (1) A quoted company must in the notice it gives of the accounts meeting draw attention to— 5
- (a) the possibility of a statement being placed on a website in pursuance of members’ requests under section 517, and
- (b) the effect of the following provisions of this section.
- (2) A company may not require the members requesting website publication to pay its expenses in complying with that section or section 518 (requirements in connection with website publication). 10
- (3) Where a company is required to place a statement on a website under section 517 it must forward the statement to the company’s auditor not later than the time when it makes the statement available on the website.
- (4) The business which may be dealt with at the accounts meeting includes any statement that the company has been required under section 517 to publish on a website. 15

520 Website publication: offences

- (1) In the event of default in complying with 20
- (a) section 518 (requirements as to website publication), or
- (b) section 519 (companies’ supplementary duties in relation to request for website publication),
- an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable— 25
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

521 Meaning of “quoted company”

- (1) For the purposes of this Chapter a company is a quoted company if it is a quoted company in accordance with section 367 (quoted and unquoted companies for the purposes of Part 15) in relation to the financial year to which the accounts to be laid at the next accounts meeting relate. 30
- (2) The provisions of subsections (4) to (6) of that section (power to amend definition by regulations) apply in relation to the provisions of this Chapter as in relation to the provisions of that Part. 35

CHAPTER 6

AUDITORS' LIABILITY

*Voidness of provisions protecting auditors from liability***522 Voidness of provisions protecting auditors from liability**

- | | |
|--|----------|
| (1) This section applies to any provision – | 5 |
| (a) for exempting an auditor of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company occurring in the course of the audit of accounts, or | |
| (b) by which a company directly or indirectly provides an indemnity (to any extent) for an auditor of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is auditor occurring in the course of the audit of accounts. | 10
15 |
| (2) Any such provision is void, except as permitted by – | |
| (a) section 523 (indemnity for costs of successfully defending proceedings), or | |
| (b) sections 524 to 526 (liability limitation agreements). | |
| (3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise. | 20 |
| (4) For the purposes of this section companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate. | |

*Indemnity for costs of defending proceedings***523 Indemnity for costs of successfully defending proceedings**

25

Section 522 (general voidness of provisions protecting auditors from liability) does not prevent a company from indemnifying an auditor against any liability incurred by him –

- | | |
|---|----|
| (a) in defending proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or | 30 |
| (b) in connection with an application under section 804 (power of court to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court. | |

*Liability limitation agreements***524 Liability limitation agreements**

35

- | | |
|---|----|
| (1) A “liability limitation agreement” is an agreement that purports to limit the amount of a liability owed to a company by its auditor in respect of any negligence, default, breach of duty or breach of trust, occurring in the course of the audit of accounts, of which the auditor may be guilty in relation to the company. | 40 |
|---|----|

- (2) Section 522 (general voidness of provisions protecting auditors from liability) does not affect the validity of a liability limitation agreement that –
- (a) complies with section 525 (terms of liability limitation agreement) and of any regulations under that section, and
 - (b) is authorised by the members of the company (see section 526). 5
- (3) Such an agreement –
- (a) is effective to the extent provided by section 527, and
 - (b) is not subject –
 - (i) in England and Wales or Northern Ireland, to section 2(2) or 3(2)(a) of the Unfair Contract Terms Act 1977 (c. 50); 10
 - (ii) in Scotland, to section 16(1)(b) or 17(1)(a) of that Act.

525 Terms of liability limitation agreement

- (1) A liability limitation agreement –
- (a) must not apply in respect of acts or omissions occurring in the course of the audit of accounts for more than one financial year, and 15
 - (b) must specify the financial year in relation to which it applies.
- (2) The Secretary of State may by regulations –
- (a) require liability limitation agreements to contain specified provisions or provisions of a specified description;
 - (b) prohibit liability limitation agreements from containing specified provisions or provisions of a specified description. 20
- “Specified” here means specified in the regulations.
- (3) Without prejudice to the generality of the power conferred by subsection (2), that power may be exercised with a view to preventing adverse effects on competition. 25
- (4) Subject to the preceding provisions of this section, it is immaterial how a liability limitation agreement is framed.
In particular, the limit on the amount of the auditor’s liability need not be a sum of money, or a formula, specified in the agreement.
- (5) Regulations under this section are subject to negative resolution procedure. 30

526 Authorisation of agreement by members of the company

- (1) A liability limitation agreement is authorised by the members of the company if it has been authorised under this section and that authorisation has not been withdrawn.
- (2) A liability limitation agreement between a private company and its auditor may be authorised – 35
- (a) by the company passing a resolution, before it enters into the agreement, waiving the need for approval,
 - (b) by the company passing a resolution, before it enters into the agreement, approving the agreement’s principal terms, or 40
 - (c) by the company passing a resolution, after it enters into the agreement, approving the agreement.
- (3) A liability limitation agreement between a public company and its auditor may be authorised –

- (a) by the company passing a resolution in general meeting, before it enters into the agreement, approving the agreement’s principal terms, or
 - (b) by the company passing a resolution in general meeting, after it enters into the agreement, approving the agreement.
- (4) The resolution required is an ordinary resolution, subject to any provision of the company’s articles requiring a higher majority (or unanimity). 5
- (5) The “principal terms” of an agreement are terms specifying, or relevant to the determination of –
- (a) the kind (or kinds) of acts or omissions covered,
 - (b) the financial year to which the agreement relates, or 10
 - (c) the limit to which the auditor’s liability is subject.
- (6) Authorisation under this section may be withdrawn by the company passing an ordinary resolution to that effect –
- (a) at any time before the company enters into the agreement, or
 - (b) if the company has already entered into the agreement, before the 15
beginning of the financial year to which the agreement relates.
- Paragraph (b) has effect notwithstanding anything in the agreement.

527 Effect of liability limitation agreement

- (1) A liability limitation agreement is not effective to limit the auditor’s liability to less than such amount as is fair and reasonable in all the circumstances of the case having regard (in particular) to – 20
- (a) the auditor’s responsibilities under this Part,
 - (b) the nature and purpose of the auditor’s contractual obligations to the company, and
 - (c) the professional standards expected of him. 25
- (2) A liability limitation agreement that purports to limit the auditor’s liability to less than the amount mentioned in subsection (1) shall have effect as if it limited his liability to that amount.
- (3) In determining what is fair and reasonable in all the circumstances of the case no account is to be taken of – 30
- (a) matters arising after the loss or damage in question has been incurred, or
 - (b) matters (whenever arising) affecting the possibility of recovering 35
compensation from other persons liable in respect of the same loss or damage.

528 Disclosure of agreement by company

- (1) A company which has entered into a liability limitation agreement must make such disclosure in connection with the agreement as the Secretary of State may require by regulations.
- (2) The regulations may provide, in particular, that any disclosure required by the regulations shall be made – 40
- (a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts), or

- (b) in the directors’ report.
- (3) Regulations under this section are subject to negative resolution procedure.

CHAPTER 7

SUPPLEMENTARY PROVISIONS

529	Minor definitions	5
	In this Part—	
	“insurance market activity” has the meaning given in section 316(3) of the Financial Services and Markets Act 2000 (c. 8);	
	“qualified”, in relation to an auditor’s report (or a statement contained in an auditor’s report), means that the report or statement does not state the auditor’s unqualified opinion that the accounts have been properly prepared in accordance with this Act or, in the case of an undertaking not required to prepare accounts in accordance with this Act, under any corresponding legislation under which it is required to prepare accounts;	10
	“regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000, except that it does not include activities of the kind specified in any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 –	15
	(a) article 25A (arranging regulated mortgage contracts),	20
	(b) article 39A (assisting administration and performance of a contract of insurance),	
	(c) article 53A (advising on regulated mortgage contracts), or	
	(d) article 21 (dealing as agent), article 25 (arranging deals in investments) or article 53 (advising on investments) where the activity concerns relevant investments that are not contractually based investments (within the meaning of article 3 of that Order);	25
	“turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of—	30
	(a) trade discounts,	
	(b) value added tax, and	
	(c) any other taxes based on the amounts so derived.	

PART 17 35

PRIVATE AND PUBLIC COMPANIES

CHAPTER 1

PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

530	Prohibition of public offers by private company	40
	(1) A private company limited by shares or limited by guarantee and having a share capital must not—	
	(a) offer to the public any securities of the company, or	

- (b) allot or agree to allot any securities of the company with a view to their being offered to the public.
- (2) Unless the contrary is proved, an allotment or agreement to allot securities is presumed to be made with a view to their being offered to the public if an offer of the securities (or any of them) to the public is made—
 - (a) within six months after the allotment or agreement to allot, or
 - (b) before the receipt by the company of the whole of the consideration to be received by it in respect of the securities.
- (3) A company does not contravene this section if—
 - (a) it acts in good faith in pursuance of arrangements under which it is to re-register as a public company before the securities are allotted, or
 - (b) as part of the terms of the offer it undertakes to re-register as a public company within a specified period, and that undertaking is complied with.
- (4) The specified period for the purposes of subsection (3)(b) must be a period ending not later than six months after the day on which the offer is made (or, in the case of an offer made on different days, first made).
- (5) In this Chapter “securities” means shares or debentures.

531 Meaning of “offer to the public”

- (1) This section explains what is meant in this Chapter by an offer of securities to the public.
- (2) An offer to the public includes an offer to any section of the public, however selected.
- (3) An offer is not regarded as an offer to the public if it can properly be regarded, in all the circumstances, as—
 - (a) not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer, or
 - (b) otherwise being a private concern of the person receiving it and the person making it.
- (4) An offer is to be regarded (unless the contrary is proved) as being a private concern of the person receiving it and the person making it if—
 - (a) it is made to a person already connected with the company and, where it is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of another person already connected with the company; or
 - (b) it is an offer to subscribe for securities to be held under an employees’ share scheme and, where it is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of—
 - (i) another person entitled to hold securities under the scheme, or
 - (ii) a person already connected with the company.
- (5) For the purposes of this section “person already connected with the company” means—
 - (a) an existing member or employee of the company,
 - (b) a member of the family of a person who is or was a member or employee of the company,

- (c) the widow or widower, or surviving civil partner, of a person who was a member or employee of the company,
 - (d) an existing debenture holder of the company, or
 - (e) a trustee (acting in his capacity as such) of a trust of which the principal beneficiary is a person within any of paragraphs (a) to (d). 5
- (6) For the purposes of subsection (5)(b) the members of a person’s family are the person’s spouse or civil partner and children (including step-children) and their descendants.

532 Enforcement of prohibition: order restraining proposed contravention

- (1) If it appears to the court – 10
- (a) on an application under this section, or
 - (b) in proceedings under section 459 or 460 of the Companies Act 1985 (c. 6) (protection of members against unfair prejudice),
- that a company is proposing to act in contravention of section 530 (prohibition of public offers by private companies), the court shall make an order under this section. 15
- (2) An order under this section is an order restraining the company from contravening that section.
- (3) An application for an order under this section may be made by – 20
- (a) a member or creditor of the company, or
 - (b) the Secretary of State.

533 Enforcement of prohibition: orders available to the court after contravention

- (1) This section applies if it appears to the court – 25
- (a) on an application under this section, or
 - (b) in proceedings under section 459 or 460 of the Companies Act 1985 (protection of members against unfair prejudice),
- that a company has acted in contravention of section 530 (prohibition of public offers by private companies).
- (2) The court must make an order requiring the company to re-register as a public company unless it appears to the court – 30
- (a) that the company does not meet the requirements for re-registration as a public company, and
 - (b) that it is impractical or undesirable to require it to take steps to do so.
- (3) If it does not make an order for re-registration, the court may make either or both of the following – 35
- (a) a remedial order (see section 534), or
 - (b) an order for the compulsory winding up of the company.
- (4) An application under this section may be made by – 40
- (a) a member of the company who –
 - (i) was a member at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
 - (ii) became a member as a result of the offer,

- (b) a creditor of the company who was a creditor at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
- (c) the Secretary of State.

534 Enforcement of prohibition: remedial order	5
(1) A “remedial order” is an order for the purpose of putting a person affected by anything done in contravention of section 530 (prohibition of public offers by private company) in the position he would have been in if it had not been done.	
(2) The following provisions are without prejudice to the generality of the power to make such an order.	10
(3) Where a private company has – (a) allotted securities pursuant to an offer to the public, or (b) allotted or agreed to allot securities with a view to their being offered to the public, a remedial order may require any person knowingly concerned in the contravention of section 530 to offer to purchase any of those securities at such price and on such other terms as the court thinks fit.	15
(4) A remedial order may be made – (a) against any person knowingly concerned in the contravention, whether or not an officer of the company; (b) notwithstanding anything in the company’s constitution (which includes, for this purpose, the terms on which any securities of the company are allotted or held); (c) whether or not the holder of the securities subject to the order is the person to whom the company allotted or agreed to allot them.	20 25
(5) Where a remedial order is made against the company itself, the court may provide for the reduction of the company’s capital accordingly.	
535 Validity of allotment etc not affected	
Nothing in this Chapter affects the validity of any allotment or sale of securities or of any agreement to allot or sell securities.	30

CHAPTER 2

MINIMUM SHARE CAPITAL REQUIREMENT FOR PUBLIC COMPANIES

536 Public company: requirement as to minimum share capital	
(1) A company that is a public company (otherwise than by virtue of re-registration as a public company) must not do business or exercise any borrowing powers unless the registrar has issued it with a certificate under this section (a “trading certificate”).	35
(2) The registrar shall issue a trading certificate if, on an application made in accordance with section 537, he is satisfied that the nominal value of the company’s allotted share capital is not less than the authorised minimum.	40

- (3) For this purpose a share allotted in pursuance of an employees' share scheme shall not be taken into account unless paid up as to –
- (a) at least one-quarter of the nominal value of the share, and
 - (b) the whole of any premium on the share.
- (4) A trading certificate has effect from the date on which it is issued and is conclusive evidence that the company is entitled to do business and exercise any borrowing powers. 5

537 Procedure for obtaining certificate

- (1) An application for a certificate under section 536 must –
- (a) state that the nominal value of the company's allotted share capital is not less than the authorised minimum, 10
 - (b) specify the amount, or estimated amount, of the company's preliminary expenses,
 - (c) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit, and 15
 - (d) be accompanied by a statement of compliance.
- (2) The statement of compliance is a statement that the company meets the requirements for the issue of a certificate under section 536.
- (3) The registrar may accept the statement of compliance as sufficient evidence of the matters stated in it. 20

538 The authorised minimum

For the purposes of sections 536 and 537 (requirement as to minimum share capital of public company) the authorised minimum is £50,000.

539 Consequences of doing business etc without a trading certificate 25

- (1) If a company does business or exercises any borrowing powers in contravention of section 536, an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under subsection (1) is liable – 30
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (3) A contravention of section 536 does not affect the validity of a transaction entered into by the company, but if a company – 35
- (a) enters into a transaction in contravention of that section, and
 - (b) fails to comply with its obligations in connection with the transaction within 21 days from being called on to do so,
- the directors of the company are jointly and severally liable to indemnify any other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with its obligations. 40

- (4) The directors who are so liable are those who were directors at the time the company entered into the transaction.

PART 18

ALLOTMENT OF SHARES

Power of directors to allot shares 5

540 Exercise by directors of power to allot shares etc

- (1) The directors of a company must not exercise any power of the company –
(a) to allot shares in the company, or
(b) to grant rights to subscribe for, or to convert any security into, shares in the company, 10
except in accordance with section 541 (private company with single class of shares) or section 542 (authorisation by company).
- (2) Subsection (1) does not apply –
(a) to the allotment of shares in pursuance of an employees' share scheme, or 15
(b) to the grant of a right to subscribe for, or to convert any security into, shares so allotted.
- (3) Where this section applies in relation to the grant of a right to subscribe for, or to convert any security into, shares, it does not apply in relation to the allotment of shares pursuant to that right. 20
- (4) A director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this section commits an offence.
- (5) A person guilty of an offence under this section is liable –
(a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding the statutory maximum. 25
- (6) Nothing in this section affects the validity of an allotment or other transaction.

541 Power of directors to allot shares etc: private company with only one class of shares

Where a private company has only one class of shares, the directors may exercise any power of the company – 30
(a) to allot shares of that class, or
(b) to grant rights to subscribe for, or to convert any security into, such shares,
except to the extent that they are prohibited from doing so by the company's articles. 35

542 Power of directors to allot shares etc: authorisation by company

- (1) The directors of a company may exercise a power of the company –
(a) to allot shares in the company, or

- (b) to grant rights to subscribe for, or to convert any security into, shares in the company,
if they are, in accordance with this section, authorised to do so by the company's articles or by resolution of the company.
- (2) Authority under this section may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions. 5
- (3) The authority must—
- (a) state the maximum amount of shares that may be allotted under it, and
- (b) specify the date on which it will expire, which must be not more than five years from— 10
- (i) in the case of an authority contained in the company's articles at the time of its original incorporation, the date of that incorporation;
- (ii) in any other case, the date on which the resolution is passed by virtue of which the authority is given. 15
- (4) Authority under this section—
- (a) may be renewed or further renewed by resolution of the company for a further period not exceeding five years, and
- (b) may at any time be revoked or varied by resolution of the company. 20
- (5) A resolution renewing an authority under this section must—
- (a) state (or restate) the maximum amount of shares that may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and
- (b) specify the date on which the renewed authority will expire. 25
- (6) In relation to rights to subscribe for, or to convert any security into, shares in the company, references in this section to the maximum amount of shares that may be allotted under the authority are to the maximum amount of shares that may be allotted pursuant to the rights.
- (7) The directors may allot shares, or grant rights to subscribe for or to convert any security into shares, after an authority under this section has expired if— 30
- (a) the shares are allotted, or the rights are granted, in pursuance of an offer or agreement made by the company before the authority expired, and
- (b) the authority allowed it to make an offer or agreement which would or might require shares to be allotted, or rights to be granted, after the authority expired. 35
- (8) A resolution of a company to give, vary, revoke or renew an authority under this section may be an ordinary resolution, even though it alters the company's articles. 40

Public companies: allotment where issue not fully subscribed

543 Public companies: allotment where issue not fully subscribed

- (1) No allotment shall be made of shares of a public company offered for subscription unless—
- (a) the issue is subscribed for in full, 45

- (b) the offer is made on terms that the shares subscribed for may be allotted in any event, or
 - (c) the offer is made on terms that the shares subscribed for may be allotted if specified conditions are met, and those conditions are met.
 - (2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first making of the offer, all money received from applicants for shares must be repaid to them forthwith, without interest. 5
 - (3) If any of the money is not repaid within 48 days after the making of the offer, the directors of the company are jointly and severally liable to repay it, with interest at the rate for the time being specified under section 17 of the Judgments Act 1838 (c. 110) from the expiration of the 48th day. 10
A director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
 - (4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription, with the following adaptations – 15
 - (a) the references in subsection (1) to subscription shall be construed accordingly;
 - (b) in subsections (2) and (3) references to the repayment of money received from applicants for shares include – 20
 - (i) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or
 - (ii) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received; 25
 - (c) any reference in those subsections to interest applies accordingly.
 - (5) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.
- 544 Effect of allotment in contravention of section 543 30**
- (1) An allotment made by a company to an applicant in contravention of section 543 (public companies: allotment where issue not fully subscribed) is voidable at the instance of the applicant within one month after the date of the allotment, and not later.
 - (2) It is so voidable even if the company is in the course of being wound up. 35
 - (3) If a director of a company knowingly permits or authorises the contravention of section 543 with respect to an allotment, he is liable to compensate the company and the allottee respectively for any loss, damages, costs or expenses that the company or allottee may have sustained or incurred by the contravention. 40
 - (4) Proceedings to recover any such loss, damages, costs or expenses may not be brought more than two years after the date of the allotment.

*Return of allotments***545 Return of allotment by limited company**

- (1) This section applies to a company limited by shares and to a company limited by guarantee and having a share capital.
- (2) The company must, within one month of making an allotment of shares, deliver to the registrar for registration a return of the allotment. 5
- (3) The return must –
- (a) contain the prescribed information, and
 - (b) be accompanied by a statement of capital.
- (4) The statement of capital must state with respect to the company's share capital at the date to which the return is made up – 10
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares, 15
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium). 20

546 Return of allotment of new class of shares by unlimited company

- (1) If an unlimited company allots shares with rights that are not in all respects uniform with shares previously allotted, the company must, within one month of making an allotment of shares, deliver to the registrar for registration a return of allotment containing prescribed particulars of those rights. 25
- (2) For this purpose shares are not to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the twelve months immediately following the former's allotment.

547 Offence of failure to make return 30

- (1) If a company makes default in complying with –
section 545 (return of allotment of shares by limited company), or
section 546 (return of allotment of new class of shares by unlimited company),
an offence is committed by every officer of the company who is in default. 35
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum. 40
- (3) In the case of default in delivering to the registrar within one month after the allotment the return required by section 545 or 546 –

- (a) any person liable for the default may apply to the court for relief, and
- (b) the court, if satisfied –
 - (i) that the omission to deliver the document was accidental or due to inadvertence, or
 - (ii) that it is just and equitable to grant relief,may make an order extending the time for delivery of the document for such period as the court thinks proper.

5

Time for accepting pre-emption offer

548 Time for acceptance of pre-emption offers

In section 90 of the Companies Act 1985 (c. 6) (communication of pre-emption offers to shareholders) after subsection (6) insert –

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“(6A) The Secretary of State may by regulations made by statutory instrument –

- (a) reduce the period specified in subsection (6) (but not to less than 14 days), or
- (b) increase that period.

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(6B) A statutory instrument containing regulations made under subsection (6A) is subject to affirmative resolution procedure.”.

Disapplication of pre-emption rights

549 Disapplication of pre-emption rights: private company with only one class of shares

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- (1) The directors of a private company that has only one class of shares may be given power by the articles, or by a special resolution of the company, to allot equity securities of that class as if section 89(1) of the Companies Act 1985 (offers to shareholders to be on pre-emptive basis) –
 - (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.

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- (2) Where the directors make an allotment under this section, sections 89 to 94 of that Act (pre-emption rights) have effect accordingly.

30

550 Disapplication of pre-emption rights: directors acting under general authorisation

- (1) Where the directors of a company are generally authorised for the purposes of section 542, they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authority as if section 89(1) of the Companies Act 1985 (c. 6) (offers to shareholders to be on pre-emptive basis) –
 - (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.

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40

-
- (2) Where the directors make an allotment under this section, sections 89 to 94 of that Act (pre-emption rights) have effect accordingly.
- (3) The power conferred by this section ceases to have effect when the authority to which it relates –
- (a) is revoked or 5
 - (b) would (if not renewed) expire.
- But if the authority is renewed the power may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.
- (4) Notwithstanding that the power conferred by this section has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the power enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired. 10
- 551 Disapplication of pre-emption rights by special resolution 15**
- (1) Where the directors of a company are authorised for the purposes of section 542 (whether generally or otherwise), the company may by special resolution resolve that section 89(1) of the Companies Act 1985 (offers to shareholders to be on pre-emptive basis) –
- (a) shall not apply to a specified allotment of equity securities to be made pursuant to that authority, or 20
 - (b) shall apply to the allotment with such modifications as may be specified in the resolution.
- (2) Where such a resolution is passed sections 89 to 94 of that Act (pre-emption rights) have effect accordingly. 25
- (3) A special resolution under this section ceases to have effect when the authority to which it relates –
- (a) is revoked or
 - (b) would (if not renewed) expire. 30
- But if the authority is renewed the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.
- (4) Notwithstanding that any such resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the resolution enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired. 35
- (5) A special resolution under this section, or a special resolution to renew such a resolution, must not be proposed unless –
- (a) it is recommended by the directors, and
 - (b) the directors have complied with subsections (6) and (7). 40
- (6) Before such a resolution is proposed, the directors must make a written statement setting out –
- (a) their reasons for making the recommendation,
 - (b) the amount to be paid to the company in respect of the equity securities to be allotted, and 45
 - (c) the directors' justification of that amount.

- (7) The directors' statement must –
- (a) if the resolution is proposed as a written resolution, be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) if the resolution is proposed at a general meeting, be circulated to the members entitled to notice of the meeting with that notice. 5

552 Liability for false statement in directors' statement

- (1) This section applies in relation to a statement sent, submitted or circulated under section 551(7) (directors' statement on resolution disapplying pre-emption rights). 10
- (2) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.
- (3) A person guilty of an offence under this section is liable – 15
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction – 20
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

553 Disapplication of pre-emption rights: sale of treasury shares

- (1) This section applies in relation to a sale of shares that is an allotment of equity securities by virtue of section 94(3A) of the Companies Act 1985 (c. 6) (sale of shares held by company as treasury shares). 25
- (2) The directors of a company may be given power by the articles, or by a special resolution of the company, to allot equity securities as if section 89(1) of the Companies Act 1985 (offers to shareholders to be on pre-emptive basis) – 30
- (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.
- (3) The provisions of section 550(2) and (4) apply in that case as they apply to a case within subsection (1) of that section. 35
- (4) The company may by special resolution resolve that section 89(1) of the Companies Act 1985 (c. 6) (offers to shareholders to be on pre-emptive basis) – 40
- (a) shall not apply to a specified allotment of securities, or
 - (b) shall apply to the allotment with such modifications as may be specified in the resolution.
- (5) The provisions of section 551(2) and (4) to (7) apply in that case as they apply to a case within subsection (1) of that section.

*Commissions, discounts and allowances***554 Commissions, discounts and allowances**

- (1) A company may, if the following conditions are satisfied, pay a commission to a person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company, 5
- (2) The conditions are –
- (a) the payment of the commission is authorised by the company's articles;
 - (b) the commission paid or agreed to be paid does not exceed – 10
 - (i) 10% of the price at which the shares are issued, or
 - (ii) the amount or rate authorised by the articles,
 whichever is the less.
- (3) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which directly by the company would be permitted by this section. 15
- (4) Except as permitted by subsections (1) to (3), a company must not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company. 20
- (5) It is immaterial how the shares or money are so applied, whether by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or being paid out of the nominal purchase money or contract price, or otherwise. 25
- (6) Nothing in this section affects the payment of such brokerage as has previously been lawful.

Provisions not applicable to shares taken on formation 30

555 Provisions not applicable to shares taken on formation

- The provisions of –
- (a) sections 540 to 553 of this Act, and
 - (b) sections 89 to 96 of the Companies Act 1985 (pre-emption rights),
- have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company. 35

PART 19

SHARE CAPITAL

Share capital and how it may be altered

556 Companies having a share capital

- (1) References in the Companies Acts to a company having a share capital are to a company that has power under its constitution to issue shares. 5
- (2) References in the Companies Acts –
 - (a) to “issued share capital” are to shares of a company that have been issued;
 - (b) to “allotted share capital” are to shares of a company that have been allotted. 10
- (3) References in the Companies Acts to issued or allotted shares, or to issued or allotted share capital, include shares taken on the formation of the company by the subscribers to the company’s memorandum.

557 Shares of limited companies to have fixed nominal value

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- (1) Shares in a limited company having a share capital must each have a fixed nominal value.
- (2) An allotment of a share that does not have a fixed nominal value is void.
- (3) Shares in a limited company having a share capital may be denominated in any currency, and different classes of shares may be denominated in different currencies. 20
- (4) If a company purports to allot shares in contravention of this section, an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine, and
 - (b) on summary conviction, to a fine not exceeding the statutory maximum. 25

558 Alteration of share capital of limited company

- (1) A limited company having a share capital may not alter its share capital except in the following ways. 30
- (2) The company may –
 - (a) increase its share capital by allotting new shares in accordance with Part 18 of this Act and Part 4 of the Companies Act 1985 (c. 6), or
 - (b) reduce its share capital in accordance with Chapter 4 of Part 5 of that Act. 35
- (3) The company may –
 - (a) sub-divide or consolidate all or any of its share capital in accordance with section 559 of this Act, or
 - (b) reconvert stock into shares in accordance with section 561 of this Act.

- (4) The company may redenominate all or any of its shares in accordance with section 586 of this Act and may reduce its share capital in accordance with section 590 of this Act in connection with such a redenomination.
- (5) Nothing in this section affects –
- (a) the power of a company to redeem shares, or to purchase its own shares, in accordance with Chapter 7 of Part 5 of the Companies Act 1985 (c. 6), 5
 - (b) the power of a company to purchase shares in pursuance of an order of the court under –
 - (i) section 98 of this Act (litigated objection to resolution for company to be re-registered as private), 10
 - (ii) section 534 of this Act (remedial order in case of breach of prohibition of public offers by private company),
 - (iii) section 177 of the Companies Act 1985 (powers of court on objection to certain payments out of capital), or 15
 - (iv) Part 17 of the Companies Act 1985 (relief to members unfairly prejudiced),
 - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares, 20
 - (d) the cancellation of shares under section 146(2) of the Companies Act 1985 (treatment of shares held by or for a public company), or
 - (e) the power of a company –
 - (i) to enter into a compromise or arrangement in accordance with section 425 of the Companies Act 1985, or 25
 - (ii) to do anything required to comply with an order of the court on an application under that section.

559 Sub-division or consolidation of shares

- (1) A limited company having a share capital may –
- (a) sub-divide its shares, or any of them, into shares of a smaller nominal amount than its existing shares, or 30
 - (b) consolidate and divide all or any of its share capital into shares of a larger nominal amount than its existing shares.
- (2) In any sub-division, consolidation or division of shares under this section, the proportion between the amount paid and the amount (if any) unpaid on each resulting share must be the same as it was in the case of the share from which that share is derived. 35
- (3) A company may exercise a power conferred by this section only if its members have passed an ordinary resolution authorising it to do so.
- (4) A resolution under subsection (3) may authorise a company – 40
- (a) to exercise more than one of the powers conferred by this section;
 - (b) to exercise a power on more than one occasion;
 - (c) to exercise a power at a specified time or in specified circumstances.
- (5) The company's articles may exclude or restrict the exercise of any power conferred by this section. 45

560 Notice to registrar of sub-division or consolidation

- (1) If a company exercises a power conferred by section 559 (sub-division or consolidation of shares) it must within one month after doing so give notice to the registrar, specifying the shares affected.
- (2) The notice must be accompanied by a statement of capital. 5
- (3) The statement of capital must state with respect to the company's share capital immediately following the exercise of the power –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares – 10
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium). 15
- (4) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 20

561 Re-conversion of stock into shares

- (1) A company that has converted paid-up shares into stock (before the repeal by this Act of the power to do so) may re-convert that stock into paid-up shares of any nominal value. 25
- (2) A company may exercise the power conferred by this section only if its members have passed an ordinary resolution authorising it to do so.
- (3) A resolution under subsection (2) may authorise a company to exercise the power conferred by this section – 30
 - (a) on more than one occasion;
 - (b) at a specified time or in specified circumstances.
- (4) If a company exercises the power conferred by this section it must, within one month after doing so, give notice to the registrar specifying the stock affected. 35
- (5) The notice must be accompanied by a statement of capital.
- (6) The statement of capital must state with respect to the company's share capital immediately following the reconversion –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares, 40
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and

- (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (7) If a company makes default in complying with subsection (4) or (5), an offence is committed by – 5
- (a) the company, and
 - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 10

562 Notice to registrar of alteration of share capital

In section 122 of the Companies Act 1985 (c. 6) (notice to registrar of alteration of share capital) after subsection (1) insert – 15

- “(1A) The notice must be accompanied by a statement of capital.
- (1B) The statement of capital must state with respect to the company’s share capital immediately following the redemption or cancellation –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares, 20
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and 25
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”.

Reserve capital

563 Abolition of reserve capital 30

- (1) Section 120 of the Companies Act 1985 (reserve liability of limited company) shall cease to have effect.
- (2) Section 124 of that Act (reserve capital of unlimited company) shall cease to have effect.
- (3) The repeals made by this section do not affect the validity of – 35
- (a) a special resolution passed by a company under section 120 of the Companies Act 1985 before the date on which this section came into force, provided that the resolution is forwarded to the registrar in accordance with section 380 of that Act or Chapter 3 of Part 3 of this Act, or 40
 - (b) the exercise of either of the powers under section 124 of the Companies Act 1985 (c. 6) before that date.

Class rights

564 Variation of class rights: companies having a share capital

For section 125 of the Companies Act 1985 (variation of class rights) substitute –

- “125 Variation of class rights: companies having a share capital** 5
- (1) This section is concerned with the variation of the rights attached to a class of shares in a company having a share capital.
 - (2) Rights attached to a class of a company’s shares may be varied if, and only if, the holders of shares of that class consent to the variation in accordance with this section. 10
 - (3) This is without prejudice to any other restrictions on the variation of the rights.
 - (4) The consent required for the purposes of this section on the part of the holders of a class of a company’s shares is –
 - (a) consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class (excluding any shares held as treasury shares), or 15
 - (b) a special resolution passed at a separate general meeting of the holders of that class sanctioning the variation.
 - (5) Any alteration of a provision contained in a company’s articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights. 20
 - (6) In this section, and (except where the context otherwise requires) in any provision in a company’s articles for the variation of the rights attached to a class of shares, references to the variation of those rights include references to their abrogation.”. 25

565 Variation of class rights: companies without a share capital

After section 125 of the Companies Act 1985 (variation of class rights: companies having a share capital) (inserted by section 564 above) insert – 30

- “125A Variation of class rights: companies without a share capital**
- (1) This section is concerned with the variation of the rights of a class of members of a company where the company does not have a share capital.
 - (2) Rights of a class of members may be varied if, and only if, the members of that class consent to the variation in accordance with this section. 35
 - (3) This is without prejudice to any other restrictions on the variation of the rights.
 - (4) The consent required for the purposes of this section on the part of the members of a class is –
 - (a) consent in writing from at least three-quarters of the members of the class, or 40

- (b) a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.
- (5) Any alteration of a provision contained in a company’s articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights. 5
- (6) In this section, and (except where the context otherwise requires) in any provision in a company’s articles for the variation of the rights of a class of members, references to the variation of those rights include references to their abrogation.”. 10
- 566 Variation of class rights: saving for court’s powers under other provisions**
- For section 126 of the Companies Act 1985 (c. 6) substitute –
- “126 Saving for court’s powers under other provisions**
- Nothing in section 125 or 125A (variation of class rights) affects the power of the court under – 15
- section 425 (court control of company compromising with members and creditors);
 - section 427 (company reconstruction or amalgamation);
 - sections 459 to 461 (protection of minorities);
 - section 98 of the Company Law Reform Act 2006 (litigated objection to public company becoming private by re-registration).”.
- 20
- 567 Variation of class rights: right to object to variation**
- (1) For the heading to section 127 of the Companies Act 1985 (shareholders’ right to object to variation) substitute “Right to object to variation: companies having a share capital”. 25
- (2) For subsection (1) of that section substitute –
- “(1) This section applies where the rights attached to any class of shares in a company are varied under section 125 (variation of class rights: companies having a share capital).”.
- 30
- (3) Omit subsection (5) of that section.
- (4) After that section insert –
- “127A Right to object to variation: companies without a share capital**
- (1) This section applies where the rights of any class of members of a company are varied under section 125A (variation of class rights: companies without a share capital). 35
- (2) Members amounting to not less than 15% of the members of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled. 40
- If such an application is made, the variation has no effect unless and until it is confirmed by the court.

- (3) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be) and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose. 5
- (4) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and shall if not satisfied confirm it. 10
The decision of the court on any such application is final.
- (5) References in this section to the variation of the rights of a class of members include references to their abrogation.

127B Copy of court order to be forwarded to the registrar 15

- (1) The company shall within 15 days after the making of an order by the court on an application under section 127 or 127A (objection to variation of class rights) forward a copy of the order to the registrar.
- (2) If default is made in complying with this section an offence is committed by – 20
- (a) the company, and
 - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.” 25

568 Registration of class rights

- (1) In section 128 of the Companies Act 1985 (c. 6) (registration of particulars of special rights) – 30
- (a) in subsection (3) (notification of variation of class rights), omit from “otherwise than” to “section 380”;
 - (b) in subsection (4) omit from “(otherwise than” to “above)”.
- (2) In section 129 of the Companies Act 1985 (registration of newly created class rights of company without share capital) – 35
- (a) in subsection (1) (notification of new class of members) –
 - (i) for “a class of members” substitute “a new class of members”, and
 - (ii) omit from “with rights which” to “section 380 applies”;
 - (b) in subsection (2) (notification of variation of class rights), omit from “otherwise than” to “section 380”; 40
 - (c) in subsection (3) (notification of variation of name or designation of class) omit from “(otherwise than” to “above)”.

*Share premiums***569 Application of share premiums**

- (1) In section 130 of the Companies Act 1985 (c. 6) (application of share premiums) for subsection (2) substitute –
- “(1A) Where, on issuing shares, a company has transferred a sum to the share premium account, it may use that sum to write off – 5
- (a) the expenses of the issue of those shares;
- (b) any commission paid on the issue of those shares.
- (2) The company may use the share premium account to pay up new shares to be allotted to members as fully paid bonus shares.”. 10
- (2) In subsection (3) of that section for “this” substitute “subsections (1A) and (2)”.

*Reduction of share capital***570 Circumstances in which companies may reduce share capital**

- (1) Before section 135 of the Companies Act 1985 (special resolution for reduction of share capital) insert – 15
- “Circumstances in which limited companies may reduce share capital”.*
- (2) Section 135 (special resolution for reduction of share capital) is amended as follows.
- (3) For subsection (1) substitute –
- “(1) A limited company having a share capital may reduce its share capital – 20
- (a) in the case of a private company limited by shares, by special resolution supported by a solvency statement in accordance with section 135A;
- (b) in any case, by special resolution confirmed by the court in accordance with sections 136 to 139. 25
- (1A) A company may not reduce its capital under subsection (1)(a) if as a result of the reduction there would no longer be any member of the company holding shares other than redeemable shares.
- (1B) Subject to that, a company may reduce its share capital under this section in any way.”. 30
- (4) In subsection (2) –
- (a) for “subsection (1)” substitute “subsection (1B)”;
- (b) omit the words following paragraph (c).
- (5) After subsection (2) insert – 35
- “(2A) A special resolution under this section may not provide for a reduction of share capital to take effect later than the date on which the resolution has effect in accordance with this Chapter.

- (2B) This Chapter (apart from subsection (2A)) has effect subject to any provision of the company’s articles restricting or prohibiting the reduction of the company’s share capital.”.

571 Reduction of capital supported by solvency statement

After section 135 of the Companies Act 1985 (c. 6) insert – 5

“Reduction of capital of private company supported by solvency statement

135A Requirement for solvency statement

- (1) A resolution for reducing share capital of a private company limited by shares is supported by a solvency statement if –
- (a) the directors of the company make a statement of the solvency of the company in accordance with section 135B (a “solvency statement”) not more than 15 days before the date on which the resolution is passed, and 10
 - (b) the resolution and solvency statement are registered in accordance with section 135C. 15
- (2) Where the resolution is proposed as a written resolution, a copy of the solvency statement must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him.
- (3) Where the resolution is proposed at a general meeting, a copy of the solvency statement must be made available for inspection by members of the company throughout that meeting. 20
- (4) The validity of a resolution is not affected by a failure to comply with subsection (2) or (3).

135B Solvency statement 25

- (1) A solvency statement is a statement that each of the directors –
- (a) has formed the opinion, as regards the company’s situation at the date of the statement, that there is no ground on which the company could then be found to be unable to pay (or otherwise discharge) its debts; and 30
 - (b) has also formed the opinion –
 - (i) if it is intended to commence the winding up of the company within twelve months of that date, that the company will be able to pay (or otherwise discharge) its debts in full within twelve months of the commencement of the winding up; or 35
 - (ii) in any other case, that the company will be able to pay (or otherwise discharge) its debts as they fall due during the year immediately following that date.
- (2) In forming those opinions, the directors must take into account all of the company’s liabilities (including any contingent or prospective liabilities). 40
- (3) The solvency statement must be in the prescribed form and must state –

- (a) the date on which it is made, and
 - (b) the name of each director of the company.
- (4) If the directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and the statement is delivered to the registrar, an offence is committed by every director who is in default. 5
- (5) A person guilty of an offence under subsection (4) is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction – 10
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both). 15

135C Registration of resolution and supporting documents

- (1) Within 15 days after the resolution for reducing share capital is passed the company must deliver to the registrar –
- (a) a copy of the solvency statement, and 20
 - (b) a statement of capital.
- This is in addition to the copy of the resolution itself that is required to be delivered to the registrar under Chapter 3 of Part 3 of the Company Law Reform Act 2006.
- (2) The statement of capital must state with respect to the company’s share capital as reduced by the resolution – 25
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares – 30
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium). 35
- (3) The registrar must register the documents delivered to him under subsection (1) on receipt.
- (4) The resolution does not take effect until those documents are registered. 40
- (5) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the solvency statement was –
- (a) made not more than 15 days before the date on which the resolution was passed, and 45
 - (b) provided to members in accordance with section 135A(2) or (3).

- (6) The validity of a resolution is not affected by –
- (a) a failure to deliver the documents required to be delivered to the registrar under subsection (1) to the registrar within the time specified in that subsection, or
 - (b) a failure to comply with subsection (5). 5
- (7) If the company delivers to the registrar a solvency statement that was not provided to members in accordance with section 135A(2) or (3), an offence is committed by every officer of the company who is in default.
- (8) If the company fails to comply with this section, an offence is committed by – 10
- (a) the company, and
 - (b) every officer of the company who is in default.
- (9) A person guilty of an offence under subsection (7) or (8) is liable – 15
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Reduction of capital confirmed by court”.

572 Registration of court order

- (1) Section 138 of the Companies Act 1985 (c. 6) (registration of order and minute of reduction) is amended as follows. 20
- (2) In the section heading for “minute of reduction” substitute “statement of capital”.
- (3) In subsection (1) for the words “minute (approved by the court)” to the end substitute “statement of capital (approved by the court) shall register the order and statement (but subject to section 139).” 25
- (4) After that subsection insert –
- “(1A) The statement of capital must state with respect to the company’s share capital as altered by the order –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares, 30
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and 35
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”
- (5) For subsection (2) substitute –
- “(2) The resolution for reducing share capital as confirmed by the order registered under subsection (1) takes effect on the registration of the order and statement of capital. 40
This is subject to subsection (2A).

(2A)	In the case of a reduction of share capital that forms part of a compromise or arrangement sanctioned by the court under section 425 (power of company to compromise with creditors and members), the resolution for reducing share capital as confirmed by the order registered under subsection (1) takes effect –	5
(a)	on delivery of the order and statement of capital to the registrar, or	
(b)	if the court so orders, on the registration of the order and statement.”.	
(6)	In subsection (4) for “minute”, in both places where it occurs, substitute “statement of capital”.	10
(7)	Omit subsections (5) and (6).	
573 Liability of members on reduced shares		
(1)	After section 139 of the Companies Act 1985 (c. 6) insert –	
	<i>“Supplementary”.</i>	15
(2)	In section 140 of the Companies Act 1985 (liability of members on reduced shares)–	
(a)	in subsection (1) for “as fixed by the minute” substitute “as notified to the registrar in accordance with section 135C(1) or 138(1)”,	
(b)	in subsection (2) after “if” insert “a reduction of capital is confirmed by the court and”, and	20
(c)	in subsection (3) for “minute” substitute “statement of capital”.	
 <i>Financial assistance</i> 		
574 Financial assistance by company for acquisition of shares		
(1)	Chapter 6 of Part 5 of the Companies Act 1985 (financial assistance by a company for acquisition of its own shares) is amended as follows.	25
(2)	For section 151 (financial assistance generally prohibited) substitute –	
	“151 Prohibited financial assistance: acquisition of shares in public company	
(1)	Where a person is acquiring or proposing to acquire shares in a public company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.	30
(2)	Where –	
(a)	a person has acquired shares in a company (“the company”), and	35
(b)	a liability has been incurred (by that or another person) for the purpose of the acquisition,	
	it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company is a public company.	40

-
- (3) Subsections (1) and (2) have effect subject to section 153 (transactions not prohibited).
- (4) If a company contravenes this section an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default. 5
- (5) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 10
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both). 15
- 151A Prohibited financial assistance: acquisition of shares in private company**
- (1) Where a person is acquiring or proposing to acquire shares in a private company, it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place. 20
- (2) Where –
- (a) a person has acquired shares in a private company, and
 - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition, 25
- it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability.
- (3) Subsections (1) and (2) have effect subject to section 153 (transactions not prohibited). 30
- (4) If a company contravenes this section an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable – 35
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 40
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).”.
- (3) Sections 155 to 158 (relaxation of prohibitions for private companies) shall cease to have effect. 45

575 Circumstances in which financial assistance is not prohibited

- (1) Section 153 of the Companies Act 1985 (c. 6) (transactions not prohibited by section 151) is amended as follows.
- (2) In the heading for “s 151” substitute “this Chapter”.
- (3) After subsection (2) insert – 5
- “(2A) Section 151A(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in its holding company if –
- (a) the company’s principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and 10
- (b) the assistance is given in good faith in the interests of the company.
- (2B) Section 151A(2) does not prohibit a company from giving financial assistance if – 15
- (a) the company’s principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and 20
- (b) the assistance is given in good faith in the interests of the company.”.
- (4) In subsection (3) for “Section 151 does not prohibit” substitute “Neither section 151 nor section 151A prohibits”. 25
- (5) In subsection (4) for “Section 151 does not prohibit” substitute “Neither section 151 nor section 151A prohibits”.

*Redeemable shares***576 Redeemable shares**

For sections 159 to 160 of the Companies Act 1985 (redeemable shares) substitute – 30

“159 Power to issue redeemable shares

- (1) A limited company having a share capital may issue shares that are to be redeemed or are liable to be redeemed at the option of the company or the shareholder (“redeemable shares”), subject to the following provisions. 35
- (2) The articles of a private limited company may exclude or restrict the issue of redeemable shares.
- (3) A public limited company may only issue redeemable shares if it is authorised to do so by its articles. 40
- (4) No redeemable shares may be issued at a time when there are no issued shares of the company that are not redeemable.

159A Terms and manner of redemption

- (1) The directors of a limited company may determine the terms, conditions and manner of redemption of shares if they are authorised to do so –
 - (a) by a resolution of the company, or 5
 - (b) by the company’s articles.
- (2) A resolution giving authority under this section may be an ordinary resolution, even though it alters the company’s articles.
- (3) Where the directors are authorised to determine the terms, conditions or manner of redemption of shares, they must do so before the shares are allotted. 10
- (4) Any obligation of the company to state in a statement of capital the rights attached to shares extends, in the case of redeemable shares, to the terms and manner of redemption.

159B Payment for redeemable shares 15

- (1) Redeemable shares in a limited company may not be redeemed unless they are fully paid.
- (2) The terms of redemption of shares in a limited company may provide that the amount payable on redemption may, by agreement between the company and the holder of the shares, be paid on a date later than the redemption date. 20
- (3) Unless redeemed in accordance with provision authorised by subsection (2), the shares must be paid for on redemption.

160 Financing of redemption

- (1) Redeemable shares in a limited company may only be redeemed out of – 25
 - (a) distributable profits of the company, or
 - (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.
- (2) Any premium payable on redemption of shares in a limited company must be paid out of distributable profits of the company, subject to the following provision. 30
- (3) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to – 35
 - (a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or
 - (b) the current amount of the company’s share premium account (including any sum transferred to that account in respect of premiums on the new shares), 40whichever is the less.
- (4) The amount of the company’s share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (3). 45

(5)	Subsections (1) and (2) are subject to – section 171 (private companies redeeming shares out of capital), and section 178(4) (terms of redemption enforceable in a winding up).	
160A	Redeemed shares treated as cancelled	5
	Where shares in a limited company are redeemed – (a) the shares are treated as cancelled, and (b) the amount of the company’s issued share capital is diminished by the nominal value of the shares accordingly.”.	
	<i>Purchase by company of its own shares</i>	10
577	Power of company to purchase own shares	
	For section 162 of the Companies Act 1985 (c. 6) (power of company to purchase own shares) substitute –	
	“162 Power of company to purchase own shares	
(1)	A limited company having a share capital may purchase its own shares (including any redeemable shares), subject to – (a) the following provisions of this Chapter, and (b) any restriction or prohibition in the company’s articles.	15
(2)	A limited company may not purchase its own shares if as a result of the purchase there would no longer be any issued shares of the company other than redeemable shares or shares held as treasury shares.	20
162ZA	Payment for purchase of own shares	
(1)	A limited company may not purchase its own shares unless they are fully paid.	
(2)	Where a limited company purchases its own shares, the shares must be paid for on purchase.	25
162ZB	Financing of purchase of own shares	
(1)	A limited company may only purchase its own shares out of – (a) distributable profits of the company, or (b) the proceeds of a fresh issue of shares made for the purpose of financing the purchase.	30
(2)	Any premium payable on the purchase by a limited company of its own shares must be paid out of distributable profits of the company, subject to the following provision.	
(3)	If the shares to be purchased were issued at a premium, any premium payable on their purchase by the company may be paid out of the proceeds of a fresh issue of shares made for the purpose of financing the purchase, up to an amount equal to – (a) the aggregate of the premiums received by the company on the issue of the shares purchased, or	35 40

- (b) the current amount of the company’s share premium account (including any sum transferred to that account in respect of premiums on the new shares),
whichever is the less.
- (4) The amount of the company’s share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (3). 5
- (5) Subsections (1) and (2) are subject to—
section 171 (private companies purchasing shares out of capital),
and 10
section 178(4) (terms of purchase enforceable in a winding up).

162ZC Treatment of shares purchased

- (1) Where a limited company makes a purchase of its own shares and—
(a) the shares are qualifying shares, and
(b) the purchase is made out of distributable profits,
section 162A (treasury shares) applies to the shares purchased. 15
- (2) For the purposes of this Chapter “qualifying shares” are shares that—
(a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000,
(b) are traded on the market known as the Alternative Investment Market established under the rules of the London Stock Exchange plc, 20
(c) are officially listed in an EEA State, or
(d) are traded on a regulated market.
In paragraph (a) “the official list” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000. 25
- (3) In any other case where a limited company makes a purchase of its own shares—
(a) the shares are treated as cancelled, and
(b) the amount of the company’s issued share capital is diminished by the nominal value of the shares accordingly.”. 30

578 Statement of capital on disclosure by company of purchase etc of own shares

- (1) In section 169 of the Companies Act 1985 (disclosure by company of purchase of own shares) after subsection (1A) insert—
- “(1AA) A return required by subsection (1) must be accompanied by a statement of capital. 35
- (1AB) The statement of capital must state with respect to the company’s share capital immediately following the delivery to it of the shares purchased—
(a) the total number of shares of the company, 40
(b) the aggregate nominal value of those shares,
(c) for each class of shares—
(i) prescribed particulars of the rights attached to the shares,
(ii) the total number of shares of that class, and 45

- (iii) the aggregate nominal value of shares of that class, and
(d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”.
- (2) After subsection (2) of section 169A of that Act (disclosure by company of cancellation or disposal of treasury shares) insert – 5
- “(2A) A return required by this section must be accompanied by a statement of capital.
- (2B) The statement of capital must state with respect to the company’s share capital immediately following cancellation or disposal (as the case may be) of the shares – 10
- (a) the total number of shares of the company,
(b) the aggregate nominal value of those shares,
(c) for each class of shares – 15
- (i) prescribed particulars of the rights attached to the shares,
(ii) the total number of shares of that class, and
(iii) the aggregate nominal value of shares of that class, and
(d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”.
- 20
- 579 Copy of contract or memorandum of terms to be available for inspection**
- (1) In section 169 (disclosure by company of purchase of own shares), omit subsections (4), (5) and (7) to (9).
- (2) After that section insert – 25
- “169AA Copy of contract or memorandum of terms to be available for inspection**
- (1) This section applies where a company enters into – 30
- (a) a contract approved under section 164 or 165, or
(b) a contract for a purchase authorised under section 166.
- (2) A company must keep available for inspection at its registered office –
- (a) a copy of the contract, or
(b) if the contract is not in writing, a written memorandum setting out the terms of the contract.
- (3) The copy or memorandum must be kept available for inspection from the conclusion of the contract until the end of the period of ten years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or, as the case may be, the date on which the contract otherwise determines. 35
- (4) Every copy or memorandum required to be kept under this section must be open to inspection without charge – 40
- (a) by any member of the company, and
(b) if the company is a public company, by any other person.

- (5) If default is made in complying with subsection (2) or (3), or an inspection required under subsection (4) is refused, an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 5
- (7) In the case of a refusal of an inspection required under subsection (4) the court may by order compel an immediate inspection.
- (8) The provisions of this section apply to a variation of a contract as they apply to the original contract.”. 10

580 Power of private companies to redeem or purchase own shares out of capital

In section 171 of the Companies Act 1985 (c. 6) (power of private companies to redeem or purchase own shares out of capital), for subsection (1) substitute –

- “(1) A private limited company may in accordance with this section, but subject to any restriction or prohibition in the company’s articles, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits or the proceeds of a fresh issue of shares.”. 15

581 Conditions for redemption or purchase of own shares out of capital 20

- (1) Section 173 of the Companies Act 1985 (conditions for payment out of capital for redemption or purchase by a private company of its own shares) is amended as follows.
- (2) In subsection (3) (under which the directors are required to make a statutory declaration as to the company’s financial position) for “a statutory declaration” substitute “a statement”. 25
- (3) For subsection (4) (directors’ opinion as to solvency: liabilities to be taken into account) substitute –
 - “(4) In forming their opinion for the purposes of subsection (3)(a), the directors must take into account all of the company’s liabilities (including any contingent or prospective liabilities).”.30
- (4) In subsection (5) (further requirements) –
 - (a) in the opening words, for “statutory declaration” substitute “statement”;
 - (b) in paragraphs (b) and (c) for “declaration” substitute “statement”. 35
- (5) For subsection (6) (offence of making declaration without reasonable grounds) substitute –
 - “(6) If the directors make a statement under this section without having reasonable grounds for the opinion expressed in it, an offence is committed by every director who is in default. 40
 - (7) A person guilty of an offence under subsection (6) is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

-
- (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).” 5
 - (6) The following amendments are consequential on that in subsection (2) above –
 - (a) in section 172(6) of the Companies Act 1985 (c. 6) for “statutory declaration of the directors” substitute “directors’ statement”; 10
 - (b) in section 174 of that Act –
 - (i) in subsection (1), for “statutory declaration” substitute “statement”, and
 - (ii) in subsection (4), for “statutory declaration” substitute “directors’ statement”; 15
 - (c) in section 175 of that Act –
 - (i) in subsections (1)(c) and (5), for “statutory declaration of the directors” substitute “directors’ statement”;
 - (ii) in subsection (6) for “statutory declaration”, substitute “directors’ statement”, and 20
 - (iii) in subsection (8), for “declaration” (twice) substitute “statement”;
 - (d) in section 179 of that Act –
 - (i) in subsection (1)(d), for “statutory declaration of the directors” substitute “directors’ statement”, and 25
 - (ii) in subsection (1)(e), for “declaration” substitute “statement”.
- 582 Notice to registrar of payment out of capital for redemption or purchase of own shares**
- After section 177 of the Companies Act 1985 insert –
- “177A Notice to registrar of payment out of capital for redemption or purchase of own shares 30**
- (1) A private limited company that makes a payment out of capital for the redemption or purchase of its own shares must, within 15 days after making the payment, give notice to the registrar.
 - (2) The notice must be accompanied by a statement of capital. 35
 - (3) The statement of capital must state with respect to the company’s share capital immediately following the payment out of capital –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares – 40
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and

- (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by – 5
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”. 10

Transfers of shares etc

583 Registration of transfers of shares and debentures

- (1) In section 183 of the Companies Act 1985 (c. 6) (transfer and registration) – 15
 - (a) in the heading, omit “and registration”;
 - (b) omit subsections (4) to (6).

- (2) After that section insert –

“183A Registration of allotment and transfer of shares and debentures

- (1) A company must register an allotment of shares or debentures as soon as practicable and in any event within two months after the date of the allotment. 20
- (2) A company must –
 - (a) register a transfer of shares or debentures, or
 - (b) send to the transferee notice of refusal to register the transfer, giving reasons for the refusal, 25as soon as practicable and in any event within two months after the date on which the transfer is lodged with it.
- (3) The directors must provide the transferee with such further information about the reasons for the refusal as the transferee may reasonably request, but such information does not include copies of minutes of meetings of directors. 30
- (4) On the application of the transferor of any share or interest in a company, the company must enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee. 35
- (5) If a company fails to comply with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 2 on the standard scale. 40

- (7) This section does not apply –
- (a) in relation to an allotment or transfer of shares if the company has issued a share warrant in respect of the shares (under section 188);
 - (b) in relation to the transmission of shares by operation of law.”. 5
- (3) Subsection (2) has effect in relation to allotments and transfers of shares and debentures that take effect after this section comes into force.

584 Share certificates and share warrants

In section 185 of the Companies Act 1985 (c. 6) (duty of company as to issue of certificates), after subsection (2) insert – 10

“(2A) Subsection (1) does not apply in relation to an allotment or transfer of shares if, following the allotment or transfer, the company has issued a share warrant in respect of the shares (under section 188).

(2B) A company must, within two months of the surrender of a share warrant for cancellation, complete and have ready for delivery the certificates of the shares specified in the warrant (unless its articles provide otherwise).” 15

Distributions

585 Distributions in kind

- (1) Part 8 of the Companies Act 1985 (distributions) is amended as follows. 20
- (2) After section 275 insert –

“Distributions in kind

275A Distribution in kind arising on disposition of non-cash asset at an undervalue: determination of amount

- (1) This section applies for the purpose of determining the amount of any distribution arising from the sale, transfer or other disposition by a company of a non-cash asset. 25
- (2) If the conditions in subsection (3) are met, the amount of the distribution is –
- (a) in a case in which the book value of the asset exceeds the amount or value of the consideration for the disposition, the amount of the excess, and 30
 - (b) in any other case, zero.
- (3) The conditions are –
- (a) that, at the time of the disposition of the asset, the company has profits available for distribution, and 35
 - (b) that, if the amount of the distribution were determined in accordance with subsection (2), the company could make the distribution without contravening –
- (i) section 263 (general limit on distributions), or 40

-
- (ii) section 264 (restriction on distribution of assets by public companies).
- (4) For the purposes of subsection (3)(a) the company’s profits available for distribution are treated as increased by the amount, if any, by which the amount or value of the consideration for the disposition exceeds the book value of the asset. 5
- (5) If the conditions in subsection (3) are not met, the amount of the distribution is the amount by which the market value of the asset as at the date of the disposition exceeds the amount or value of the consideration for the disposition. 10
- (6) In this section “book value”, in relation to an asset, means –
- (a) the amount at which the asset is stated in the accounts relevant for the purposes of the distribution in accordance with sections 270 to 275, or
- (b) where the asset is not stated in those accounts at any amount, zero. 15
- (7) The provisions of sections 270 to 275 (distribution to be justified by reference to company’s accounts) have effect subject to this section.”.
- (3) In section 276 (distributions in kind) –
- (a) at the end of the heading insert “: **treatment of unrealised profits**”, and
- (b) for “of or including” substitute “arising from the sale, transfer or other disposition by it of”. 20
- (4) After section 280 insert –
- (5)
- “280A Application of rules of law restricting distribution** 25
- (1) Except as provided in this section, the provisions of this Part are without prejudice to any rule of law restricting the sums out of which, or the cases in which, a distribution may be made.
- (2) For the purposes of any rule of law requiring distributions to be paid out of profits or restricting the return of capital to members – 30
- (a) the amount of any distribution or return of capital arising from the sale, transfer or other disposition by a company of a non-cash asset must be determined in accordance with section 275A (distributions in kind: determination of amount); and
- (b) section 276 (distributions in kind: treatment of unrealised profits) applies as it applies for the purposes of this Part. 35
- (3) In this section references to distributions are to amounts regarded as distributions for the purposes of any such rule of law as is referred to in subsection (1).”.
- (6) In section 281 (saving for other restraints on distribution), omit “or rule of law”. 40

*Redenomination of share capital***586 Redenomination of share capital**

- (1) A limited company having a share capital may by ordinary resolution redenominate its share capital or any class of its share capital. “Redenominate” means convert shares from having a fixed nominal value in one currency to having a fixed nominal value in another currency. 5
- (2) The conversion must be made at an appropriate spot rate of exchange specified in the resolution.
- (3) The rate must be either – 10
- (a) a rate prevailing on a day specified in the resolution, or
 - (b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.
- The day or period specified for the purposes of paragraph (a) or (b) must be within the period of 28 days ending on the day before the resolution is passed.
- (4) A resolution under this section may specify conditions which must be met before the redenomination takes effect. 15
- (5) Redenomination in accordance with a resolution under this section takes effect – 20
- (a) on the day on which the resolution is passed, or
 - (b) on such later day as may be determined in accordance with the resolution.
- (6) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 28 days beginning on the date on which it is passed.
- (7) A company’s articles may prohibit or restrict the exercise of the power conferred by this section. 25

587 Calculation of new nominal values

For each class of share the new nominal value of each share is calculated as follows:

Step One 30

Take the aggregate of the old nominal values of all the shares of that class.

Step Two

Translate that amount into the new currency at the rate of exchange specified in the resolution.

Step Three 35

Divide the resulting figure by the number of shares in the class.

588 Effect of redenomination

- (1) The redenomination of shares does not affect any rights or obligations of members under the company’s constitution, or any restrictions affecting members under the company’s constitution. 40

In particular, it does not affect entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or any liability in respect of amounts unpaid on shares.

- (2) For this purpose the company's constitution includes the terms on which any shares of the company are allotted or held. 5
- (3) Subject to subsection (1), references to the old nominal value of the shares in any agreement or statement, or in any deed, instrument or document, shall (unless the context otherwise requires) be read after the resolution takes effect as references to the new nominal value of the shares.

589 Notice to registrar of redenomination 10

- (1) If a company having a share capital redenominates any of its share capital, it must within one month after doing so give notice to the registrar, specifying the shares redenominated.
- (2) The notice must –
 - (a) state the date on which the resolution was passed, and 15
 - (b) be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as redenominated by the resolution –
 - (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares, 20
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share 25
(whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default. 30
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

590 Reduction of capital in connection with redenomination 35

- (1) A company that passes a resolution redenominating some or all of its shares may, for the purpose of adjusting the nominal values of the redenominated shares to obtain values that are, in the opinion of the company, more suitable, reduce its share capital under this section.
- (2) A reduction of capital under this section requires a special resolution of the company. 40
- (3) Any such resolution must be passed within three months of the resolution effecting the redenomination.

- (4) The amount by which a company's share capital is reduced under this section must not exceed 10% of the nominal value of the company's allotted share capital immediately after the reduction.
- (5) A reduction of capital under this section does not extinguish or reduce any liability in respect of share capital not paid up. 5
- (6) Nothing in –
- (a) sections 135 to 135C of the Companies Act 1985 (c. 6) (reduction of capital supported by solvency statement), or
 - (b) sections 135 and 136 to 141 of that Act (reduction of capital requiring confirmation by court), 10
- applies to a reduction of capital under this section.

591 Notice to registrar of reduction of capital in connection with redenomination

- (1) A company that passes a resolution under section 590 (reduction of capital in connection with redenomination) must within 15 days after the resolution is passed give notice to the registrar stating – 15
- (a) the date of the resolution, and
 - (b) the date of the resolution under section 586 in connection with which it was passed.
- This is in addition to the copies of the resolutions themselves that are required to be delivered to the registrar under Chapter 3 of Part 3. 20
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as reduced by the resolution –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares, 25
 - (c) for each class of shares –
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium). 30
- (4) The registrar must register the notice and statement on receipt.
- (5) The reduction of capital is not effective until those documents are registered.
- (6) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the reduction in share capital is in accordance with section 590(4) (reduction of capital not to exceed 10% of nominal value of allotted shares immediately after reduction). 35
- (7) If a company fails to comply with this section, an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default. 40
- (8) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment to a fine, and
 - (b) on summary conviction to a fine not exceeding the statutory maximum.

592 Redenomination reserve

- (1) The amount by which a company's share capital is reduced under section 590 (reduction of capital in connection with redenomination) must be transferred to a reserve, called "the redenomination reserve".
- (2) The redenomination reserve may be applied by the company in paying up shares to be allotted to members as fully paid bonus shares. 5
- (3) Subject to that, the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the redenomination reserve were paid-up share capital of the company.

PART 20 10

DEBENTURES

593 Register of debenture holders

- (1) Any register of debenture holders of a company that is kept by the company must be kept available for inspection –
 - (a) at the company's registered office, or 15
 - (b) at another place in the part of the United Kingdom in which the company is registered.
- (2) A company must give notice to the registrar of the place where any such register is kept available for inspection and of any change in that place.
- (3) No such notice is required if the register has, at all times since it came into existence, been kept available for inspection at the company's registered office. 20
- (4) If a company makes default for 14 days in complying with subsection (2), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default, 25
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (6) References in this section to a register of debenture holders include a duplicate – 30
 - (a) of a register of debenture holders that is kept outside the United Kingdom, or
 - (b) of any part of such a register.

594 Register of debenture holders: right to inspect and require copy 35

- (1) Every register of debenture holders of a company must, except when duly closed, be open to the inspection –
 - (a) of the registered holder of any such debentures, or any holder of shares in the company, without charge, and
 - (b) of any other person on payment of such fee as may be prescribed. 40

- (2) Any person may require a copy of the register, or any part of it, on payment of such fee as may be prescribed.
- (3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.
- (4) The request must contain the following information – 5
- (a) in the case of an individual, his name and address;
 - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
 - (c) the purpose for which the information is to be used; and
 - (d) whether the information will be disclosed to any other person, and if so – 10
 - (i) where that person is an individual, his name and address,
 - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and 15
 - (iii) the purpose for which the information is to be used by that person.
- (5) For the purposes of this section a register is “duly closed” if it is closed in accordance with provision contained –
- (a) in the articles or in the debentures, 20
 - (b) in the case of debenture stock in the stock certificates, or
 - (c) in the trust deed or other document securing the debentures or debenture stock.
- The total period for which a register is closed in any year must not exceed 30 days. 25
- (6) References in this section to a register of debenture holders include a duplicate –
- (a) of a register of debenture holders that is kept outside the United Kingdom, or
 - (b) of any part of such a register. 30

595 Register of debenture holders: response to request for inspection or copy

- (1) Where a company receives a request under section 594 (register of debenture holders: right to inspect and require copy), it must within five working days either – 35
- (a) comply with the request, or
 - (b) apply to the court.
- (2) If it applies to the court it must notify the person making the request.
- (3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose – 40
- (a) it shall direct the company not to comply with the request, and
 - (b) it may further order that the company’s costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.
- (4) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether 45

made by the same person or different persons), it may direct that the company is not to comply with any such request.

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.

- (5) If on an application under this section the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued. 5

596 Register of debenture holders: refusal of inspection or default in providing copy 10

- (1) If an inspection required under section 594 (register of debenture holders: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by – 15
- (a) the company, and
 - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 20
- (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

597 Register of debenture holders: offences in connection with request for or disclosure of information 25

- (1) It is an offence for a person knowingly or recklessly to make in a request under section 594 (register of debenture holders: right to inspect or require copy) a statement that is misleading, false or deceptive in a material particular.
- (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section – 30
- (a) to do anything that results in the information being disclosed to another person, or
 - (b) to fail to do anything with the result that the information is disclosed to another person,
- knowing or having reason to suspect that person may use the information for a purpose that is not a proper purpose. 35
- (3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction – 40
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both). 45

598 Time limit for claims arising from entry in register

- (1) Liability incurred by a company –
- (a) from the making or deletion of an entry in the register of debenture holders, or
 - (b) from a failure to make or delete any such entry, 5
- is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period). 10

599 Right of debenture holder to copy of deed

- (1) Any holder of debentures of a company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any trust deed for securing the debentures.
- (2) If default is made in complying with this section, an offence is committed by every officer of the company who is in default. 15
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 20
- (4) In the case of any such default the court may direct that the copy required be sent to the person requiring it.

PART 21

TRANSFER OF SECURITIES

600 Transfer of securities: power to make regulations 25

- (1) The power to make regulations under section 207 of the Companies Act 1989 (c. 40) (regulations enabling title to securities to be evidenced and transferred without a written instrument) is exercisable by the Treasury and the Secretary of State, either jointly or concurrently.
- (2) The references in that section to the Secretary of State, which by virtue of the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315) are to be read as references to the Treasury, shall accordingly be read as references to both or either of them, as the case may require. 30

601 Transfer of securities: extension of powers

- (1) Regulations under section 207 of the Companies Act 1989 may make provision – 35
- (a) enabling the members of a company or of any designated class of companies to adopt, by ordinary resolution, arrangements under which title to securities is required to be evidenced and transferred without a written instrument; or 40
 - (b) requiring companies, or any designated class of companies, to adopt such arrangements.

- (2) The regulations may make such provision –
- (a) in respect of all securities issued by a company, or
 - (b) in respect of all securities of a specified description.
- (3) The arrangements provided for by regulations making such provision as is mentioned in subsection (1) must not be such that a person who, but for the arrangements would be entitled – 5
- (a) to have his name entered in the company’s register of members, or
 - (b) to give instructions in respect of any securities, ceases to be so entitled.
- (4) The regulations may – 10
- (a) prohibit the issue of any certificate by the company in respect of the issue or transfer of securities,
 - (b) require the provision by the company to holders of securities of statements (at specified intervals or on specified occasions) of the securities held in their name, and 15
 - (c) make provision as to the matters of which any such certificate or statement is, or is not, evidence.
- This is without prejudice to the generality of the power conferred by section 207 of the Companies Act 1989 (c. 40).
- (5) In this section – 20
- (a) references to a designated class of companies are to a class designated in the regulations or by order under section 602;
 - (b) “specified” means specified in the regulations; and
 - (c) expressions that are also used in section 207 of the Companies Act 1989 have the same meaning as in that section. 25

602 Transfer of securities: order-making power

- (1) The Treasury or the Secretary of State may by order designate classes of companies for the purposes of section 601.
- (2) The Treasury or the Secretary of State may by order provide that, in relation to securities of a specified description – 30
- (a) in a designated class of companies, or
 - (b) in a specified company,
- specified provisions of the regulations either do not apply or apply subject to specified modifications.
- (3) In this section – 35
- (a) “specified” means specified in the order, and
 - (b) “the regulations” means regulations made under section 207 of the Companies Act 1989 by virtue of section 601.
- (4) An order under this section is subject to negative resolution procedure.

603 Transfer of securities: supplementary provisions 40

- (1) Before making regulations under section 207 of the Companies Act 1989, or any order under section 602, the Treasury or the Secretary of State must carry out such consultation as appears to them to be appropriate.

- (2) In section 207 of the Companies Act 1989 (c. 40) –
- (a) the requirement in the second sentence of subsection (4) (rights and obligations under regulations to correspond with those that would arise apart from the regulations) shall cease to have effect, and
 - (b) in subsection (7) for “the purposes mentioned above” substitute “the purposes of this section and section 601 of the Company Law Reform Act 2006”. 5

PART 22

INFORMATION ABOUT INTERESTS IN COMPANY’S SHARES

Introductory 10

604 Companies to which this Part applies

This Part applies only to public companies.

605 Shares to which this Part applies

- (1) References in this Part to a company’s shares are to the company’s issued shares of a class carrying rights to vote in all circumstances at general meetings of the company (including any shares held as treasury shares). 15
- (2) The temporary suspension of voting rights in respect of any shares does not affect the application of this Part in relation to interests in those or any other shares.

Notice requiring information about interests in shares 20

606 Notice by company requiring information about interests in its shares

- (1) A public company may give notice under this section to any person whom the company knows or has reasonable cause to believe –
 - (a) to be interested in the company’s shares, or
 - (b) to have been so interested at any time during the three years immediately preceding the date on which the notice is issued. 25
- (2) The notice may require the person –
 - (a) to confirm that fact or (as the case may be) to state whether or not it is the case, and
 - (b) if he holds, or has during that time held, any such interest, to give such further information as may be required in accordance with the following provisions of this section. 30
- (3) The notice may require the person to whom it is addressed to give particulars of his own present or past interest in the company’s shares (held by him at any time during the three year period mentioned in subsection (1)(b)). 35
- (4) The notice may require the person to whom it is addressed, where –
 - (a) his interest is a present interest and another interest in the shares subsists, or
 - (b) another interest in the shares subsisted during that three year period at a time when his interest subsisted, 40

to give, so far as lies within his knowledge, such particulars with respect to that other interest as may be required by the notice.

- (5) The particulars referred to in subsections (3) and (4) include –
- (a) the identity of persons interested in the shares in question, and
 - (b) whether persons interested in the same shares are or were parties to –
 - (i) an agreement to which section 632 applies (certain share acquisition agreements), or
 - (ii) an agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- (6) The notice may require the person to whom it is addressed, where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.
- (7) The information required by the notice must be given within such reasonable time as may be specified in the notice.

607 Notice requiring information: order imposing restrictions on shares

- (1) Where –
- (a) a notice under section 606 (notice requiring information about interests in company's shares) is served by a company on a person who is or was interested in shares in the company, and
 - (b) that person fails to give the company the information required by the notice within the time specified in it,
- the company may apply to the court for an order directing that the shares in question be subject to the restrictions of Part 15 of the Companies Act 1985 (c. 6).
- (2) If the court is satisfied that such an order may unfairly affect the rights of third parties in respect of the shares, the court may, for the purpose of protecting those rights and subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order shall not constitute a breach of the restrictions.
- (3) On an application under this section the court may make an interim order. Any such order may be made unconditionally or on such terms as the court thinks fit.

608 Notice requiring information: offences

- (1) A person who –
- (a) fails to comply with a notice under section 606 (notice requiring information about interests in company's shares), or
 - (b) in purported compliance with such a notice –
 - (i) makes a statement that he knows to be false in a material particular, or
 - (ii) recklessly makes a statement that is false in a material particular,
- commits an offence.
- (2) A person does not commit an offence under subsection (1)(a) if he proves that the requirement to give information was frivolous or vexatious.

- (3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 5
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both). 10

609 Notice requiring information: persons exempted from obligation to comply

- (1) A person is not obliged to comply with a notice under section 606 (notice requiring information about interests in company's shares) if he is for the time being exempted by the Secretary of State from the operation of that section.
- (2) The Secretary of State must not grant any such exemption unless – 15
- (a) he has consulted the Governor of the Bank of England, and
 - (b) he (the Secretary of State) is satisfied that, having regard to any undertaking given by the person in question with respect to any interest held or to be held by him in any shares, there are special reasons why that person should not be subject to the obligations imposed by that section. 20

Power of members to require company to act

610 Power of members to require company to act

- (1) The members of a company may require it to exercise its powers under section 606 (notice requiring information about interests in shares). 25
- (2) A company is required to do so once it has received requests (to the same effect) from members of the company holding at least 10% of such of the paid-up capital of the company as carries a right to vote at general meetings of the company (excluding any voting rights attached to any shares in the company held as treasury shares). 30
- (3) A request –
- (a) may be in hard copy form or in electronic form,
 - (b) must –
 - (i) state that the company is requested to exercise its powers under section 606, 35
 - (ii) specify the manner in which the company is requested to act, and
 - (iii) give reasonable grounds for requiring the company to exercise those powers in the manner specified, and
 - (c) must be authenticated by the person or persons making it. 40

611 Duty of company to comply with requirement

- (1) A company that is required under section 610 to exercise its powers under section 606 (notice requiring information about interests in company’s shares) must exercise those powers in the manner specified in the requests.
- (2) If default is made in complying with subsection (1) an offence is committed by every officer of the company who is in default. 5
- (3) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum. 10

612 Report to members on outcome of investigation

- (1) On the conclusion of an investigation carried out by a company in pursuance of a requirement under section 610 the company must cause a report of the information received in pursuance of the investigation to be prepared. 15
The report must be made available at the company’s registered office within a reasonable period (not more than 15 days) after the conclusion of the investigation.
- (2) Where –
 - (a) a company undertakes an investigation in pursuance of a requirement under section 610, and 20
 - (b) the investigation is not concluded within three months after the date on which the company became subject to the requirement,
the company must cause to be prepared in respect of that period, and in respect of each succeeding period of three months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation. 25
- (3) Each such report must be made available at the company’s registered office within a reasonable period (not more than 15 days) after the end of the period to which it relates.
- (4) The company must within three days of making any report prepared under this section available at its registered office, notify the members who made the requests under section 606 that the report is so available. 30
- (5) For the purposes of this section an investigation carried out by a company in pursuance of a requirement under section 610 is concluded when – 35
 - (a) the company has made all such inquiries as are necessary or expedient for the purposes of the requirement, and
 - (b) in the case of each such inquiry –
 - (i) a response has been received by the company, or
 - (ii) the time allowed for a response has elapsed.
- (6) A report prepared under this section must be kept at the company’s registered office for at least six years after the day on which it is first made available there. 40

613 Report to members: offences

- (1) If default is made in complying with section 612 (report to members on outcome of investigation), an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable – 5
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

614 Right to inspect and request copy of reports

- (1) Any report prepared under section 612 must be open to inspection by any person without charge. 10
- (2) Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such report or any part of it. The copy must be provided within ten days after the request is received by the company. 15
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 20
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it. 25

*Register of interests disclosed***615 Register of interests disclosed**

- (1) The company must keep a register of information received by it in pursuance of a requirement imposed under section 606 (notice requiring information about interests in company's shares). 30
- (2) A company which receives any such information must, within three days of the receipt, enter in the register –
 - (a) the fact that the requirement was imposed and the date on which it was imposed, and
 - (b) the information received in pursuance of the requirement. 35
- (3) The information must be entered against the name of the present holder of the shares in question or, if there is no present holder or the present holder is not known, against the name of the person holding the interest.
- (4) The register must be made up so that the entries against the names entered in it appear in chronological order. 40

- (5) If default is made in complying with this section an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 5
- (7) The company is not by virtue of anything done for the purposes of this section affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares. 10

616 Register to be kept available for inspection

- (1) The register kept under section 615 (register of interests disclosed) must be kept available for inspection at the company’s registered office or at the place where the company’s register of members is kept.
- (2) A company must give notice to the registrar of companies of the place where the register is kept available for inspection and of any change in that place. 15
- (3) No such notice is required if the register has at all times been kept available for inspection at the company’s registered office.
- (4) If default is made in complying with subsection (1), or a company makes default for 14 days in complying with subsection (2), an offence is committed by – 20
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale. 25

617 Associated index

- (1) Unless the register kept under section 615 (register of interests disclosed) is kept in such a form as itself to constitute an index, the company must keep an index of the names entered in it. 30
- (2) The company must make any necessary entry or alteration in the index within ten days after the date on which any entry or alteration is made in the register.
- (3) The index must contain, in respect of each name, a sufficient indication to enable the information entered against it to be readily found. 35
- (4) The index must be at all times kept available for inspection at the same place as the register.
- (5) If default is made in complying with this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default. 40
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case

of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale.

618 Rights to inspect and require copy of entries

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| (1) | The register required to be kept under section 615 (register of interests disclosed), and any associated index, must be open to inspection by any person without charge. | 5 |
| (2) | Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any entry in the register. | |
| (3) | A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect. | 10 |
| (4) | The request must contain the following information – | |
| | (a) in the case of an individual, his name and address; | |
| | (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation; | |
| | (c) the purpose for which the information is to be used; and | 15 |
| | (d) whether the information will be disclosed to any other person, and if so – | |
| | (i) where that person is an individual, his name and address, | |
| | (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and | 20 |
| | (iii) the purpose for which the information is to be used by that person. | |

619 Court supervision of purpose for which rights may be exercised

- | | | |
|-----|---|----|
| (1) | Where a company receives a request under section 618 (register of interests disclosed: right to inspect and require copy), it must – | 25 |
| | (a) comply with the request if it is satisfied that it is made for a proper purpose, and | |
| | (b) refuse the request if it is not so satisfied. | |
| (2) | If the company refuses the request, it must inform the person making the request, stating the reason why it is not satisfied. | 30 |
| (3) | A person whose request is refused may apply to the court. | |
| (4) | If an application is made to the court – | |
| | (a) the person who made the request must notify the company, and | |
| | (b) the company must use its best endeavours to notify any persons whose details would be disclosed if the company were required to comply with the request. | 35 |
| (5) | If the court is not satisfied that the inspection or copy is sought for a proper purpose, it shall direct that the company not to comply with the request. | |
| (6) | If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request. | 40 |

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.

- (7) If the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued. 5

620 Register of interests disclosed: refusal of inspection or default in providing copy

- (1) If an inspection required under section 618 (register of interests disclosed: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by – 10
- (a) the company, and
 - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 15
- (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it. 20

621 Register of interests disclosed: offences in connection with request for or disclosure of information

- (1) It is an offence for a person knowingly or recklessly to make in a request under section 618 (register of interests disclosed: right to inspect or require copy) a statement that is misleading, false or deceptive in a material particular. 25
- (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section –
- (a) to do anything that results in the information being disclosed to another person, or
 - (b) to fail to do anything with the result that the information is disclosed to another person, 30
- knowing or having reason to suspect that person may use the information for a purpose that is not a proper purpose.
- (3) A person guilty of an offence under this section is liable – 35
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction –
- (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 40
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

622 Entries not to be removed from register

- (1) Entries in the register kept under section 615 (register of interests disclosed) must not be deleted except in accordance with –
 - section 623 (old entries), or
 - section 624 (incorrect entry relating to third party). 5
- (2) If an entry is deleted in contravention of subsection (1), the company must restore it as soon as reasonably practicable.
- (3) If default is made in complying with subsection (1) or (2), an offence is committed by –
 - (a) the company, and 10
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention of subsection (2), a daily default fine not exceeding one-tenth of level 3 on the standard scale. 15

623 Removal of entries from register: old entries

A company may remove an entry from the register kept under section 615 (register of interests disclosed) if more than six years have elapsed since the entry was made.

624 Removal of entries from register: incorrect entry relating to third party 20

- (1) This section applies where in pursuance of an obligation imposed by a notice under section 606 (notice requiring information about interests in company's shares) a person gives to a company the name and address of another person as being interested in shares in the company.
- (2) That other person may apply to the company for the removal of the entry from the register. 25
- (3) If the company is satisfied that the information in pursuance of which the entry was made is incorrect, it shall remove the entry.
- (4) If an application under subsection (3) is refused, the applicant may apply to the court for an order directing the company to remove the entry in question from the register. 30
The court may make such an order if it thinks fit.

625 Adjustment of entry relating to share acquisition agreement

- (1) If a person who is identified in the register kept by a company under section 615 (register of interests disclosed) as being a party to an agreement to which section 632 applies (certain share acquisition agreements) ceases to be a party to the agreement, he may apply to the company for the inclusion of that information in the register. 35
- (2) If the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears in the register as a party to the agreement. 40

- (3) If an application under this section is refused (otherwise than on the ground that the information has already been recorded), the applicant may apply to the court for an order directing the company to include the information in question in the register.

The court may make such an order if it thinks fit.

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626 Duty of company ceasing to be public company

- (1) If a company ceases to be a public company, it must continue to keep any register kept under section 615 (register of interests disclosed), and any associated index, until the end of the period of six years after it ceased to be such a company.

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- (2) If default is made in complying with this section, an offence is committed by –
(a) the company, and
(b) every officer of the company who is in default.

- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale.

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Meaning of interest in shares

627 Interest in shares: general

- (1) This section applies to determine for the purposes of this Part whether a person has an interest in shares.

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- (2) In this Part –
(a) a reference to an interest in shares includes an interest of any kind whatsoever in the shares, and
(b) any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded.

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- (3) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is treated as having an interest in the shares.

- (4) A person is treated as having an interest in shares if –
(a) he enters into a contract to acquire them, or
(b) not being the registered holder, he is entitled –
(i) to exercise any right conferred by the holding of the shares, or
(ii) to control the exercise of any such right.

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- (5) For the purposes of subsection (4)(b) a person is entitled to exercise or control the exercise of a right conferred by the holding of shares if he –
(a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
(b) is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

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- (6) A person is treated as having an interest in shares if –
(a) he has a right to call for delivery of the shares to himself or to his order, or

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- (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares.

This applies whether the right or obligation is conditional or absolute.

- (7) Persons having a joint interest are treated as each having that interest.
- (8) It is immaterial that shares in which a person has an interest are unidentifiable. 5

628 Interest in shares: right to subscribe for shares

- (1) Section 606 (notice by company requiring information about interests in its shares) applies in relation to a person who has, or previously had, or is or was entitled to acquire, a right to subscribe for shares in the company as it applies in relation to a person who is or was interested in shares in that company. 10
- (2) References in that section to an interest in shares shall be read accordingly.

629 Interest in shares: family interests

- (1) For the purposes of this Part a person is taken to be interested in shares in which—
- (a) his spouse or civil partner, or 15
- (b) any infant child or step-child of his, is interested.
- (2) In relation to Scotland “infant” means a person under the age of 18 years.

630 Interest in shares: corporate interests

- (1) For the purposes of this Part a person is taken to be interested in shares if a body corporate is interested in them and— 20
- (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body. 25
- (2) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if—
- (a) another body corporate is entitled to exercise or control the exercise of that voting power, and
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate. 30
- (3) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if—
- (a) he has a right (whether or not subject to conditions) the exercise of which would make him so entitled, or 35
- (b) he is under an obligation (whether or not subject to conditions) the fulfilment of which would make him so entitled.

631 Interest in shares: agreement to acquire interests in a particular company

- (1) For the purposes of this Part an interest in shares may arise from an agreement between two or more persons that includes provision for the acquisition by any 40

one or more of them of interests in shares of a particular public company (the “target company” for that agreement).

- (2) This section applies to such an agreement if –
- (a) the agreement includes provision imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in the shares of the target company acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the company’s shares to which the agreement relates), and 5
 - (b) an interest in the target company’s shares is in fact acquired by any of the parties in pursuance of the agreement. 10
- (3) The reference in subsection (2) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person). 15
- (4) Once an interest in shares in the target company has been acquired in pursuance of the agreement, this section continues to apply to the agreement so long as the agreement continues to include provisions of any description mentioned in subsection (2). 20
- This applies irrespective of –
- (a) whether or not any further acquisitions of interests in the company’s shares take place in pursuance of the agreement;
 - (b) any change in the persons who are for the time being parties to it;
 - (c) any variation of the agreement.
- References in this subsection to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement. 25
- (5) In this section –
- (a) “agreement” includes any agreement or arrangement, and
 - (b) references to provisions of an agreement include – 30
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.
- References elsewhere in this Part to an agreement to which this section applies have a corresponding meaning. 35
- (6) This section does not apply –
- (a) to an agreement that is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or 40
 - (b) to an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

632 Extent of obligation in case of share acquisition agreement

- (1) For the purposes of this Part each party to an agreement to which section 631 applies is treated as interested in all shares in the target company in which any other party to the agreement is interested apart from the agreement (whether 45

- or not the interest of the other party was acquired, or includes any interest that was acquired, in pursuance of the agreement).
- (2) For those purposes an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of section 631 (and this section) in relation to the agreement. 5
- (3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under section 629 or 630 (family or corporate interests) or by the application of section 631 (and this section) in relation to any other agreement with respect to shares in the target company to which he is a party. 10
- (4) A notification with respect to his interest in shares in the target company made to the company under this Part by a person who is for the time being a party to an agreement to which section 631 applies must—
- (a) state that the person making the notification is a party to such an agreement, 15
 - (b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and
 - (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 631 (and this section) and, if so, the number of those shares. 20

Other supplementary provisions

633 Information protected from wider disclosure

- (1) Information in respect of which a company is for the time being entitled to any exemption conferred by regulations under section 391(3) (information about related undertakings to be given in notes to accounts: exemption where disclosure harmful to company's business)— 25
- (a) must not be included in a report under section 612 (report to members on outcome of investigation), and
 - (b) must not be made available under section 618 (right to inspect and request copy of entries). 30
- (2) Where any such information is omitted from a report under section 612, that fact must be stated in the report.

634 Reckoning of periods for fulfilling obligations

Where the period allowed by any provision of this Part for fulfilling an obligation is expressed as a number of days, any day that is not a working day shall be disregarded in reckoning that period. 35

635 Power to make further provision by regulations

- (1) The Secretary of State may by regulations amend— 40
- (a) the definition of shares to which this Part applies (section 605),
 - (b) the provisions as to notice by a company requiring information about interests in its shares (section 606), and

- (c) the provisions as to what is taken to be an interest in shares (sections 627 and 628).
- (2) The regulations may amend, repeal or replace those provisions and make such other consequential amendments or repeals of provisions of this Part as appear to the Secretary of State to be appropriate. 5
- (3) Regulations under this section are subject to affirmative resolution procedure.

PART 23

COMPANY’S ANNUAL RETURN

636 Duty to deliver annual returns

- (1) Every company must deliver to the registrar successive annual returns each of which is made up to a date not later than the date that is from time to time the company’s return date. 10
- (2) The company’s return date is –
 - (a) the anniversary of the company’s incorporation, or
 - (b) if the company’s last return delivered in accordance with this Part was made up to a different date, the anniversary of that date. 15
- (3) Each return must –
 - (a) contain the information required by or under the following provisions of this Part, and
 - (b) be delivered to the registrar within 28 days after the date to which it is made up. 20

637 Contents of annual return: general

- (1) Every annual return must state the date to which it is made up and contain the following information –
 - (a) the address of the company’s registered office; 25
 - (b) the type of company it is and its principal business activities;
 - (c) the prescribed particulars of –
 - (i) the directors of the company, and
 - (ii) in the case of a public company, the secretary or joint secretaries; 30
 - (d) if the register of members is not kept available for inspection at the company’s registered office, the address of the place where it is kept available for inspection;
 - (e) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept available for inspection at the company’s registered office, the address of the place where it is kept available for inspection. 35
- (2) The information as to the company’s type must 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. 40

638 Contents of annual return: information about share capital and shareholders

- (1) The annual return of a company having a share capital must also contain –
- (a) a statement of capital, and
 - (b) the particulars required by subsections (3) to (6) about the members of the company. 5
- (2) The statement of capital must state with respect to the company's share capital at the date to which the return is made up –
- (a) the total number of shares of the company,
 - (b) the aggregate nominal value of those shares,
 - (c) for each class of shares – 10
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
 - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium). 15
- (3) The return must contain the prescribed particulars 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). 20
- The return must conform to such requirements as may be prescribed for the purpose of enabling the entries relating to any given person to be easily found.
- (4) The return must also state – 25
- (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,
 - (b) the number of shares of each class transferred –
 - (i) since the date to which the last return was made up, or
 - (ii) in the case of the first return, since the incorporation of the company, 30
 - (c) the dates of registration of the transfers.
- (5) If either of the two immediately preceding returns has given the full particulars required by subsections (3) and (4), the return need only give such particulars as relate – 35
- (a) to persons ceasing to be or becoming members since the date of the last return, and
 - (b) to shares transferred since that date.
- (6) Where the company has converted any of its shares into stock, the return must give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares. 40

639 Contents of annual return: power to make further provision by regulations

- (1) The Secretary of State may by regulations make further provision as to the information to be given in a company's annual return. 45

- (2) The regulations may –
 - (a) amend or repeal the provisions of sections 637 and 638, and
 - (b) provide for exceptions from the requirements of those sections as they have effect from time to time.
- (3) Regulations under this section are subject to negative resolution procedure. 5

640 Failure to deliver annual return

- (1) If a company fails to deliver an annual return before the end of the period of 28 days after a return date, an offence is committed by –
 - (a) the company,
 - (b) subject to subsection (4) – 10
 - (i) every director of the company, and
 - (ii) in the case of a public company, every secretary of the company, and
 - (c) every other officer of the company who is in default.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 15
- (3) The contravention continues until such time as an annual return made up to that return date is delivered by the company to the registrar. 20
- (4) It is a defence for a director or secretary charged with an offence under subsection (1)(b) to prove that he took all reasonable steps to avoid the commission or continuation of the offence.
- (5) In the case of continued contravention, an offence is also committed by every officer of the company who did not commit an offence under subsection (1) in relation to the initial contravention but is in default in relation to the continued contravention. 25

A person guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the contravention continues and he is in default. 30
- (6) References in this section to delivery of a return to the registrar are to the delivery of a return in relation to which all the requirements mentioned in section 725(1) (requirements for proper delivery) are complied with.

641 Application of provisions to shadow directors

- For the purposes of this Part a shadow director is treated as a director. 35

PART 24

TAKEOVERS ETC

CHAPTER 1

THE TAKEOVER PANEL

The Panel and its rules 5**642 The Panel**

- (1) The body known as the Panel on Takeovers and Mergers (“the Panel”) is to have the functions conferred on it by or under this Chapter.
- (2) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions. 10
- (3) The Panel may make arrangements for any of its functions to be discharged by –
- (a) a committee or sub-committee of the Panel, or
 - (b) an officer or member of staff of the Panel, or a person acting as such.
- This is subject to section 643(4) and (5). 15

643 Rules

- (1) The Panel must make rules giving effect to Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive.
- (2) Rules made by the Panel may also make other provision – 20
- (a) for or in connection with the regulation of –
 - (i) takeover bids,
 - (ii) merger transactions, and
 - (iii) transactions (not falling within sub-paragraph (i) or (ii)) that have or may have, directly or indirectly, an effect on the ownership or control of companies; 25
 - (b) for or in connection with the regulation of things done in consequence of, or otherwise in relation to, any such bid or transaction;
 - (c) about cases where –
 - (i) any such bid or transaction is, or has been, contemplated or apprehended, or 30
 - (ii) an announcement is made denying that any such bid or transaction is intended.
- (3) The provision that may be made under subsection (2) includes, in particular, provision for a matter that is, or is similar to, a matter provided for by the Panel in the City Code on Takeovers and Mergers as it had effect immediately before the passing of this Act. 35
- (4) In relation to rules made by virtue of section 657 (fees and charges), functions under this section may be discharged either by the Panel itself or by a committee of the Panel (but not otherwise).

- (5) In relation to rules of any other description, the Panel must discharge its functions under this section by a committee of the Panel.
- (6) Section 1 (meaning of “company”) does not apply for the purposes of this section.
- (7) In this section “takeover bid” includes a takeover bid within the meaning of the Takeovers Directive. 5
- (8) In this Chapter “the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council.
- (9) A reference to rules in the following provisions of this Chapter is to rules under this section. 10

644 Further provisions about rules

- (1) Rules may –
 - (a) make different provision for different purposes;
 - (b) make provision subject to exceptions or exemptions;
 - (c) contain incidental, supplemental, consequential or transitional provision; 15
 - (d) authorise the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances.Rules made by virtue of paragraph (d) must require the Panel to give reasons for acting as mentioned in that paragraph. 20
- (2) Rules must be made by an instrument in writing.
- (3) Immediately after an instrument containing rules is made, the text must be made available to the public, with or without payment, in whatever way the Panel thinks appropriate.
- (4) A person is not to be taken to have contravened a rule if he shows that at the time of the alleged contravention the text of the rule had not been made available as required by subsection (3). 25
- (5) The production of a printed copy of an instrument purporting to be made by the Panel on which is endorsed a certificate signed by an officer of the Panel authorised by it for that purpose and stating –
 - (a) that the instrument was made by the Panel,
 - (b) that the copy is a true copy of the instrument, and
 - (c) that on a specified date the text of the instrument was made available to the public as required by subsection (3),is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate. 35
- (6) A certificate purporting to be signed as mentioned in subsection (5) is to be treated as having been properly signed unless the contrary is shown.
- (7) A person who wishes in any legal proceedings to rely on an instrument by which rules are made may require the Panel to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (5). 40

645 Rulings

- (1) The Panel may give rulings on the interpretation, application or effect of rules.

- (2) To the extent and in the circumstances specified in rules, and subject to any review or appeal, a ruling has binding effect.

646 Directions

- Rules may contain provision conferring power on the Panel to give any direction that appears to the Panel to be necessary in order – 5
- (a) to restrain a person from acting (or continuing to act) in breach of rules;
 - (b) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules;
 - (c) otherwise to secure compliance with rules. 10

Information

647 Power to require documents and information

- (1) The Panel may by notice in writing require a person –
 - (a) to produce any documents that are specified or described in the notice;
 - (b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice. 15
- (2) A requirement under subsection (1) must be complied with –
 - (a) at a place specified in the notice, and
 - (b) before the end of such reasonable period as may be so specified.
- (3) This section applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions. 20
- (4) The Panel may require –
 - (a) any document produced to be authenticated, or
 - (b) any information provided (whether in a document or otherwise) to be verified, 25
 in such manner as it may reasonably require.
- (5) The Panel may authorise a person to exercise any of its powers under this section.
- (6) A person exercising a power by virtue of subsection (5) must, if required to do so, produce evidence of his authority to exercise the power. 30
- (7) The production of a document in pursuance of this section does not affect any lien that a person has on the document.
- (8) The Panel may take copies of or extracts from a document produced in pursuance of this section.
- (9) A reference in this section to the production of a document includes a reference to the production of – 35
 - (a) a hard copy of information recorded otherwise than in hard copy form, or
 - (b) information in a form from which a hard copy can be readily obtained.

- (10) A person is not required by this section to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

648 Restrictions on disclosure

- (1) This section applies to information (in whatever form) – 5
(a) relating to the private affairs of an individual, or
(b) relating to any particular business,
that is provided to the Panel in connection with the exercise of its functions.
- (2) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business. 10
- (3) Subsection (2) does not apply to any disclosure of information that has been authorised by the Panel and –
(a) is made for the purpose of facilitating the carrying out by the Panel of any of its functions, 15
(b) is made to a person specified in Part 1 of Schedule 2,
(c) is of a description specified in Part 2 of that Schedule, or
(d) is made in accordance with Part 3 of that Schedule.
- (4) The Secretary of State may amend Schedule 2 by order subject to negative resolution procedure. 20
- (5) An order under subsection (4) must not –
(a) amend Part 1 of Schedule 2 by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function); 25
(b) amend Part 2 of Schedule 2 by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
(c) amend Part 3 of Schedule 2 so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom. 30
- (6) Subsection (2) does not apply to –
(a) the disclosure by an authority within subsection (7) of information disclosed to it by the Panel in reliance on subsection (3);
(b) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority within subsection (7). 35
- (7) The authorities within this subsection are –
(a) the Financial Services Authority;
(b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive; 40
(c) any other person or body that exercises functions of a public nature, under legislation in an EEA State other than the United Kingdom, that are similar to the Panel’s functions or those of the Financial Services Authority.
- (8) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source. 45

- (9) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).

649 Offence of disclosure in contravention of section 648

- (1) A person who discloses information in contravention of section 648 is guilty of an offence, unless – 5
- (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in section 648(1), or
 - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (2) A person guilty of an offence under this section is liable – 10
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction – 15
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) Where a company or other body corporate commits an offence under this section, an offence is also committed by every officer of the company or other body corporate who is in default. 20

Co-operation

650 Panel’s duty of co-operation

- (1) The Panel must take such steps as it considers appropriate to co-operate with – 25
- (a) the Financial Services Authority;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Services Authority. 30
- (2) Co-operation may include the sharing of information that the Panel is not prevented from disclosing.

Hearings and appeals 35

651 Hearings and appeals

- (1) Rules must provide for a decision of the Panel to be subject to review by a committee of the Panel (the “Hearings Committee”) at the instance of such persons affected by the decision as are specified in the rules.
- (2) Rules may also confer other functions on the Hearings Committee. 40

- (3) Rules must provide for there to be a right of appeal against a decision of the Hearings Committee to an independent tribunal (the “Takeover Appeal Board”) in such circumstances and subject to such conditions as are specified in the rules.
- (4) Rules may contain – 5
- (a) provision as to matters of procedure in relation to proceedings before the Hearings Committee (including provision imposing time limits);
 - (b) provision about evidence in such proceedings;
 - (c) provision as to the powers of the Hearings Committee dealing with a matter referred to it; 10
 - (d) provision about enforcement of decisions of the Hearings Committee and the Takeover Appeal Board.
- (5) Rules must contain provision –
- (a) requiring the Panel, when acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, to do so by an officer or member of staff of the Panel (or a person acting as such); 15
 - (b) preventing a person who is or has been a member of the committee mentioned in section 643(5) from being a member of the Hearings Committee or the Takeover Appeal Board;
 - (c) preventing a person who is a member of the committee mentioned in section 643(5), of the Hearings Committee or of the Takeover Appeal Board from acting as mentioned in paragraph (a). 20

Contravention of rules etc

652 Sanctions

- (1) Rules may contain provision conferring power on the Panel to impose sanctions on a person who has – 25
- (a) acted in breach of rules, or
 - (b) failed to comply with a direction given by virtue of section 646.
- (2) Subsection (3) applies where rules made by virtue of subsection (1) confer power on the Panel to impose a sanction of a kind not provided for by the City Code on Takeovers and Mergers as it had effect immediately before the passing of this Act. 30
- (3) The Panel must prepare a statement (a “policy statement”) of its policy with respect to – 35
- (a) the imposition of the sanction in question, and
 - (b) where the sanction is in the nature of a financial penalty, the amount of the penalty that may be imposed.
- An element of the policy must be that, in making a decision about any such matter, the Panel has regard to the factors mentioned in subsection (4).
- (4) The factors are – 40
- (a) the seriousness of the breach or failure in question in relation to the nature of the rule or direction contravened;
 - (b) the extent to which the breach or failure was deliberate or reckless;
 - (c) whether the person on whom the sanction is to be imposed is an individual. 45

- (5) The Panel may at any time revise a policy statement.
- (6) The Panel must prepare a draft of any proposed policy statement (or revised policy statement) and consult such persons about the draft as the Panel considers appropriate.
- (7) The Panel must publish, in whatever way it considers appropriate, any policy statement (or revised policy statement) that it prepares. 5
- (8) In exercising, or deciding whether to exercise, its power to impose a sanction within subsection (2) in the case of any particular breach or failure, the Panel must have regard to any relevant policy statement published and in force at the time when the breach or failure occurred. 10

653 Failure to comply with rules about bid documentation

- (1) This section applies where a takeover bid is made for a company that has securities carrying voting rights admitted to trading on a regulated market in the United Kingdom.
- (2) Where an offer document published in respect of the bid does not comply with offer document rules, an offence is committed by – 15
 - (a) the person making the bid, and
 - (b) where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published. 20
- (3) A person commits an offence under subsection (2) only if –
 - (a) he knew that the offer document did not comply, or was reckless as to whether it complied, and
 - (b) he failed to take all reasonable steps to secure that it did comply.
- (4) Where a response document published in respect of the bid does not comply with response document rules, an offence is committed by any director or other officer of the company referred to in subsection (1) who – 25
 - (a) knew that the response document did not comply, or was reckless as to whether it complied, and
 - (b) failed to take all reasonable steps to secure that it did comply. 30
- (5) Where an offence is committed under subsection (2)(b) or (4) by a company or other body corporate (“the relevant body”) – 35
 - (a) subsection (2)(b) has effect as if the reference to a director, officer or member of the person making the bid included a reference to a director, officer or member of the relevant body;
 - (b) subsection (4) has effect as if the reference to a director or other officer of the company referred to in subsection (1) included a reference to a director, officer or member of the relevant body.
- (6) A person guilty of an offence under this section is liable – 40
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) Nothing in this section affects any power of the Panel in relation to the enforcement of its rules.

- (8) Section 1 (meaning of “company”) does not apply for the purposes of this section.
- (9) In this section –
- “designated” means designated in rules;
 - “offer document” means a document required to be published by rules giving effect to Article 6.2 of the Takeovers Directive; 5
 - “offer document rules” means rules designated as rules that give effect to Article 6.3 of that Directive;
 - “response document” means a document required to be published by rules giving effect to Article 9.5 of that Directive; 10
 - “response document rules” means rules designated as rules that give effect to the first sentence of Article 9.5 of that Directive;
 - “securities” means shares or debentures;
 - “takeover bid” has the same meaning as in that Directive;
 - “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances. 15

654 Compensation

- (1) Rules may confer power on the Panel to order a person to pay such compensation as it thinks just and reasonable if he is in breach of a rule the effect of which is to require the payment of money. 20
- (2) Rules made by virtue of this section may include provision for the payment of interest (including compound interest).

655 Enforcement by the court

- (1) If, on the application of the Panel, the court is satisfied –
- (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or
 - (b) that a person has contravened a rule-based requirement or a disclosure requirement,
- the court may make any order it thinks fit to secure compliance with the requirement. 30
- (2) In subsection (1) “the court” means the High Court or, in Scotland, the Court of Session.
- (3) Except as provided by subsection (1), no person –
- (a) has a right to seek an injunction, or
 - (b) in Scotland, has title or interest to seek an interdict or an order for specific performance, 35
- to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.
- (4) In this section –
- “contravene” includes fail to comply; 40
 - “disclosure requirement” means a requirement imposed under section 647;
 - “rule-based requirement” means a requirement imposed by or under rules.

656 No action for breach of statutory duty etc

- (1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.
- (2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or (subject to any provision made by rules) affect the validity of any other thing. 5
- (3) In this section –
 - (a) “contravention” includes failure to comply;
 - (b) “disclosure requirement” and “rule-based requirement” have the same meaning as in section 655. 10

Funding

657 Fees and charges

- (1) Rules may provide for fees or charges to be payable to the Panel for the purpose of meeting any part of its expenses.
- (2) A reference in this section or section 658 to expenses of the Panel is to any expenses that have been or are to be incurred by the Panel in, or in connection with, the discharge of its functions, including in particular – 15
 - (a) payments in respect of the expenses of the Takeover Appeal Board;
 - (b) the cost of repaying the principal of, and of paying any interest on, any money borrowed by the Panel; 20
 - (c) the cost of maintaining adequate reserves.

658 Levy

- (1) For the purpose of meeting any part of the expenses of the Panel, the Secretary of State may by regulations provide for a levy to be payable to the Panel – 25
 - (a) by specified persons or bodies, or persons or bodies of a specified description, or
 - (b) on transactions, of a specified description, in securities on specified markets.

In this subsection “specified” means specified in the regulations.
- (2) The power to specify (or to specify descriptions of) persons or bodies must be exercised in such a way that the levy is payable only by persons or bodies that appear to the Secretary of State – 30
 - (a) to be capable of being directly affected by the exercise of any of the functions of the Panel, or
 - (b) otherwise to have a substantial interest in the exercise of any of those functions. 35
- (3) Regulations under this section may in particular –
 - (a) specify the rate of the levy and the period in respect of which it is payable at that rate;
 - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy. 40
- (4) In determining the rate of the levy payable in respect of a particular period, the Secretary of State –

- (a) must take into account any other income received or expected by the Panel in respect of that period;
 - (b) may take into account estimated as well as actual expenses of the Panel in respect of that period.
- (5) The Panel must – 5
- (a) keep proper accounts in respect of any amounts of levy received by virtue of this section;
 - (b) prepare, in relation to each period in respect of which any such amounts are received, a statement of account relating to those amounts in such form and manner as is specified in the regulations. 10
- Those accounts must be audited, and the statement certified, by persons appointed by the Secretary of State.
- (6) Regulations under this section – 15
- (a) are subject to affirmative resolution procedure if subsection (7) applies to them;
 - (b) otherwise, are subject to negative resolution procedure.
- (7) This subsection applies to – 20
- (a) the first regulations under this section;
 - (b) any other regulations under this section that would result in a change in the persons or bodies by whom, or the transactions on which, the levy is payable.
- (8) If a draft of an instrument containing regulations under this section would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument. 25

659 Recovery of fees, charges or levy

An amount payable by any person or body by virtue of section 657 or 658 is a debt due from that person or body to the Panel, and is recoverable accordingly.

Miscellaneous and supplementary

660 Panel as party to proceedings 30

The Panel is capable (despite being an unincorporated body) of –

- (a) bringing proceedings under this Chapter in its own name;
- (b) bringing or defending any other proceedings in its own name.

661 Exemption from liability in damages

- (1) Neither the Panel, nor any person within subsection (2), is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel's functions. 35
- (2) A person is within this subsection if – 40
 - (a) he is (or is acting as) a member, officer or member of staff of the Panel, or
 - (b) he is a person authorised under section 647(5).

- (3) Subsection (1) does not apply –
- (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights). 5

662 Privilege against self-incrimination

- (1) A statement made by a person in response to –
- (a) a requirement under section 647(1), or
 - (b) an order made by the court under section 655 to secure compliance with such a requirement, 10
- may not be used against him in criminal proceedings in which he is charged with an offence to which this subsection applies.
- (2) Subsection (1) applies to any offence other than an offence under one of the following provisions (which concern false statements made otherwise than on oath) – 15
- (a) section 5 of the Perjury Act 1911 (c. 6);
 - (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39);
 - (c) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)). 20

663 Annual reports

- (1) After the end of each financial year the Panel must publish a report.
- (2) The report must –
- (a) set out how the Panel’s functions were discharged in the year in question; 25
 - (b) include the Panel’s accounts for that year;
 - (c) mention any matters the Panel considers to be of relevance to the discharge of its functions.

664 Amendments to Financial Services and Markets Act 2000 30

- (1) The Financial Services and Markets Act 2000 (c. 8) is amended as follows.
- (2) Section 143 (power to make rules endorsing the City Code on Takeovers and Mergers etc) is repealed.
- (3) In section 144 (power to make price stabilising rules), for subsection (7) substitute – 35
- “(7) “Consultation procedures” means procedures designed to provide an opportunity for persons likely to be affected by alterations to those provisions to make representations about proposed alterations to any of those provisions.”.
- (4) In section 349 (exceptions from restrictions on disclosure of confidential information), after subsection (3) insert – 40
- “(3A) Section 348 does not apply to –

- (a) the disclosure by a recipient to which subsection (3B) applies of confidential information disclosed to it by the Authority in reliance on subsection (1);
 - (b) the disclosure of such information by a person obtaining it directly or indirectly from a recipient to which subsection (3B) applies. 5
 - (3B) This subsection applies to –
 - (a) the Panel on Takeovers and Mergers;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive; 10
 - (c) any other person or body that exercises public functions, under legislation in an EEA State other than the United Kingdom, that are similar to the Authority’s functions or those of the Panel on Takeovers and Mergers.”.
 - (5) In section 354 (Financial Services Authority’s duty to co-operate with others), after subsection (1) insert – 15
 - “(1A) The Authority must take such steps as it considers appropriate to co-operate with –
 - (a) the Panel on Takeovers and Mergers;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive; 20
 - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Authority to be similar to those of the Panel on Takeovers and Mergers.”. 25
 - (6) In section 417(1) (definitions), insert at the appropriate place –
 - ““Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;”.
- 665 Power to extend to Isle of Man and Channel Islands**
- Her Majesty may by Order in Council direct that any of the provisions of this Chapter extend, with such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands. 30

CHAPTER 2

IMPEDIMENTS TO TAKEOVERS

Opting in and opting out 35

666 Opting in and opting out

- (1) A company may by special resolution (an “opting-in resolution”) opt in for the purposes of this Chapter if the following three conditions are met in relation to the company.
- (2) The first condition is that the company has voting shares admitted to trading on a regulated market. 40

- (3) The second condition is that—
- (a) the company’s articles of association—
 - (i) do not contain any such restrictions as are mentioned in Article 11 of the Takeovers Directive, or
 - (ii) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article,
 and
 - (b) those articles do not contain any other provision which would be incompatible with that Article.
- (4) The third condition is that—
- (a) no shares conferring special rights in the company are held by—
 - (i) a minister,
 - (ii) a nominee of, or any other person acting on behalf of, a minister, or
 - (iii) a company directly or indirectly controlled by a minister,
 and
 - (b) no such rights are exercisable by or on behalf of a minister under any enactment.
- (5) A company may revoke an opting-in resolution by a further special resolution (an “opting-out resolution”).
- (6) For the purposes of subsection (3), a reference in Article 11 of the Takeovers Directive to Article 7(1) or 9 of that Directive is to be read as referring to rules under section 643(1) giving effect to the relevant Article.
- (7) In subsection (4) “minister” means—
- (a) the holder of an office in Her Majesty’s Government in the United Kingdom;
 - (b) the Scottish Ministers;
 - (c) a Minister within the meaning given by section 7(3) of the Northern Ireland Act 1998 (c. 47);
- and for the purposes of that subsection “minister” also includes the Treasury, the Board of Trade, the Defence Council and the National Assembly for Wales.
- (8) The Secretary of State may by order subject to negative resolution procedure provide that subsection (4) applies in relation to a specified person or body that exercises functions of a public nature as it applies in relation to a minister. “Specified” means specified in the order.

667 Further provision about opting-in and opting-out resolutions

- (1) An opting-in resolution or an opting-out resolution must specify the date from which it is to have effect (the “effective date”).
- (2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.
- (3) The second and third conditions in section 666 must be met at the time when an opting-in resolution is passed, but the first one does not need to be met until the effective date.

- (4) An opting-in resolution passed before the time when voting shares of the company are admitted to trading on a regulated market complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.
- (5) An opting-in resolution passed before the commencement of this section complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that commencement. 5
- (6) The effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which a copy of the opting-in resolution was forwarded to the registrar. 10
- (7) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent the second condition in section 666 from being met is of no effect until the effective date of an opting-out resolution passed by the company. 15

Consequences of opting in

668 Effect on contractual restrictions

- (1) The following provisions have effect where a takeover bid is made for an opted-in company.
- (2) An agreement to which this section applies is invalid in so far as it places any restriction – 20
 - (a) on the transfer to the offeror, or at his direction to another person, of shares in the company during the offer period;
 - (b) on the transfer to any person of shares in the company at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company; 25
 - (c) on rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid;
 - (d) on rights to vote at a general meeting of the company that – 30
 - (i) is the first such meeting to be held after the end of the offer period, and
 - (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.
- (3) This section applies to an agreement – 35
 - (a) entered into between a person holding shares in the company and another such person on or after 21st April 2004, or
 - (b) entered into at any time between such a person and the company,and it applies to such an agreement even if the law applicable to the agreement (apart from this section) is not the law of a part of the United Kingdom. 40
- (4) The reference in subsection (2)(c) to rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid includes a reference to rights to vote on a written resolution concerned with that question.

- (5) For the purposes of subsection (2)(c), action which might result in the frustration of a bid is any action of that kind specified in rules under section 643(1) giving effect to Article 9 of the Takeovers Directive.
- (6) If a person suffers loss as a result of any act or omission that would (but for this section) be a breach of an agreement to which this section applies, he is entitled to compensation, of such amount as the court considers just and equitable, from any person who would (but for this section) be liable to him for committing or inducing the breach. 5
- (7) In subsection (6) “the court” means the High Court or, in Scotland, the Court of Session. 10
- (8) A reference in this section to voting shares in the company does not include—
- (a) debentures, or
 - (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided). 15

669 Power of offeror to require general meeting to be called

- (1) Where a takeover bid is made for an opted-in company, the offeror may by making a request to the directors of the company require them to call a general meeting of the company if, at the date at which the request is made, he holds shares amounting to not less than 75% in value of all the voting shares in the company. 20
- (2) The reference in subsection (1) to voting shares in the company does not include—
- (a) debentures, or 25
 - (b) shares that, under the company’s articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).
- (3) Sections 286 to 288 (members’ power to require general meetings to be called) apply as they would do if subsection (1) above were substituted for subsections (1) and (2) of section 286, and with any other necessary modifications. 30

Supplementary

670 Communication of decisions

- (1) A company that has passed an opting-in resolution or an opting-out resolution must notify— 35
- (a) the Panel on Takeovers and Mergers, and
 - (b) where the company—
 - (i) has voting shares admitted to trading on a regulated market in an EEA State other than the United Kingdom, or 40
 - (ii) has requested such admission,
 the authority designated by that state as the supervisory authority for the purposes of Article 4.1 of the Takeovers Directive.

- (2) Notification must be given within 15 days after the resolution is passed and, if any admission or request such as is mentioned in subsection (1)(b) occurs at a later time, within 15 days after that time.
- (3) If a company fails to comply with this section, an offence is committed by –
- (a) the company, and 5
 - (b) every officer of it who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 10

671 Interpretation of Chapter

- (1) In this Chapter –
- “company” means –
 - (a) a company within the meaning of this Act, or
 - (b) an unregistered company within the meaning of section 718 of the Companies Act 1985 (c. 6);
 - “offeror” and “takeover bid” have the same meaning as in the Takeovers Directive;
 - “offer period”, in relation to a takeover bid, means the time allowed for acceptance of the bid by –
 - (a) rules under section 643(1) giving effect to Article 7(1) of the Takeovers Directive, or
 - (b) where the rules giving effect to that Article which apply to the bid are those of an EEA State other than the United Kingdom, those rules;
 - “opted-in company” means a company in relation to which –
 - (a) an opting-in resolution has effect, and
 - (b) the conditions in section 666(2) and (4) continue to be met;
 - “opting-in resolution” has the meaning given by section 666(1);
 - “opting-out resolution” has the meaning given by section 666(5);
 - “the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;
 - “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances;
 - “voting shares” means shares carrying voting rights. 35
- (2) For the purposes of this Chapter –
- (a) securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares;
 - (b) debentures issued by a company are treated as shares in the company if they carry voting rights. 40

672 Transitory provision

- (1) Where a takeover bid is made for an opted-in company, section 368 of the Companies Act 1985 (extraordinary general meeting on members’ requisition) and section 378 of that Act (extraordinary and special resolutions) have effect as follows until their repeal by this Act. 45

- (2) Section 368 has effect as if a members' requisition included a requisition of a person who –
- (a) is the offeror in relation to the takeover bid, and
 - (b) holds at the date of the deposit of the requisition shares amounting to not less than 75% in value of all the voting shares in the company. 5
- (3) In relation to a general meeting of the company that –
- (a) is the first such meeting to be held after the end of the offer period, and
 - (b) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company,
- section 378(2) (meaning of "special resolution") has effect as if "14 days' notice" were substituted for "21 days' notice". 10
- (4) A reference in this section to voting shares in the company does not include –
- (a) debentures, or
 - (b) shares that, under the company's articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided). 15

673 Power to extend to Isle of Man and Channel Islands

Her Majesty may by Order in Council direct that any of the provisions of this Chapter extend, with such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands. 20

CHAPTER 3

AMENDMENTS TO COMPANIES ACT 1985

674 Matters to be dealt with in directors' report

- (1) Part 7 of the Companies Act 1985 (c. 6) (accounts and audit) is amended as follows. 25
- (2) In Schedule 7 (matters to be dealt with in directors' report), after Part 6 insert –

"PART 7

DISCLOSURE REQUIRED BY CERTAIN PUBLICLY-TRADED COMPANIES

- 13 (1) This Part of this Schedule applies to the directors' report for a financial year if the company had securities carrying voting rights admitted to trading on a regulated market at the end of that year. 30
- (2) The report shall contain detailed information, by reference to the end of that year, on the following matters –
- (a) the structure of the company's capital, including in particular – 35
 - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company, and

- (ii) where there are two or more such classes, the percentage of the total share capital represented by each class;
- (b) any restrictions on the transfer of securities in the company, including in particular – 5
 - (i) limitations on the holding of securities, and
 - (ii) requirements to obtain the approval of the company, or of other holders of securities in the company, for a transfer of securities;
- (c) in the case of each person with a significant direct or indirect holding of securities in the company, such details as are known to the company of – 10
 - (i) the identity of the person,
 - (ii) the size of the holding, and
 - (iii) the nature of the holding; 15
- (d) in the case of each person who holds securities carrying special rights with regard to control of the company –
 - (i) the identity of the person, and
 - (ii) the nature of the rights;
- (e) where – 20
 - (i) the company has an employees’ share scheme, and
 - (ii) shares to which the scheme relates have rights with regard to control of the company that are not exercisable directly by the employees,how those rights are exercisable; 25
- (f) any restrictions on voting rights, including in particular –
 - (i) limitations on voting rights of holders of a given percentage or number of votes,
 - (ii) deadlines for exercising voting rights, and
 - (iii) arrangements by which, with the company’s co-operation, financial rights carried by securities are held by a person other than the holder of the securities; 30
- (g) any agreements between holders of securities that are known to the company and may result in restrictions on the transfer of securities or on voting rights; 35
- (h) any rules that the company has about –
 - (i) appointment and replacement of directors, or
 - (ii) amendment of the company’s articles of association;
- (i) the powers of the company’s directors, including in particular any powers in relation to the issuing or buying back by the company of its shares; 40
- (j) any significant agreements to which the company is a party that take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects of any such agreements; 45
- (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment (whether through resignation, purported redundancy or otherwise) that occurs because of a takeover bid. 50

- (3) For the purposes of sub-paragraph (2)(a) a company’s capital includes any securities in the company that are not admitted to trading on a regulated market.
- (4) For the purposes of sub-paragraph (2)(c) a person has an indirect holding of securities if – 5
- (a) they are held on his behalf, or
 - (b) he is able to secure that rights carried by the securities are exercised in accordance with his wishes.
- (5) Sub-paragraph (2)(j) does not apply to an agreement if – 10
- (a) disclosure of the agreement would be seriously prejudicial to the company, and
 - (b) the company is not under any other obligation to disclose it.
- (6) In this paragraph –
- “securities” means shares or debentures;
 - “takeover bid” has the same meaning as in the Takeovers Directive; 15
 - “the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;
 - “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances.”. 20
- (3) In section 234ZZA (requirements of directors’ reports), at the end of subsection (4) (contents of Schedule 7) insert –
- “Part 7 specifies information to be disclosed by certain publicly-traded companies.”. 25
- (4) After that subsection insert –
- “(5) A directors’ report shall also contain any necessary explanatory material with regard to information that is required to be included in the report by Part 7 of Schedule 7.”.
- (5) In section 251 (summary financial statements), after subsection (2ZA) insert – 30
- “(2ZB) A company that sends to an entitled person a summary financial statement instead of a copy of its directors’ report shall –
- (a) include in the statement the explanatory material required to be included in the directors’ report by section 234ZZA(5), or
 - (b) send that material to the entitled person at the same time as it sends the statement. 35
- For the purposes of paragraph (b), subsections (2A) to (2E) apply in relation to the material referred to in that paragraph as they apply in relation to a summary financial statement.”.
- (6) The amendments made by this section apply in relation to directors’ reports for financial years beginning on or after 20th May 2006. 40

675 Takeover offers

- (1) Schedule 3 (which makes amendments to Part 13A of the Companies Act 1985 (c. 6)) has effect.

(b) “specified” means specified in a direction under this section.

446B Direction to terminate investigation

- (1) The Secretary of State may direct an inspector to take no further steps in his investigation.
- (2) The Secretary of State may give a direction under this section to an inspector appointed under section 432(1) or 442(3) only on the grounds that it appears to him that—
 - (a) matters have come to light in the course of the inspector’s investigation which suggest that a criminal offence has been committed, and
 - (b) those matters have been referred to the appropriate prosecuting authority.
- (3) Where the Secretary of State gives a direction under this section, any direction already given to the inspector under section 437(1) to produce an interim report, and any direction given to him under section 446A(3) in relation to such a report, shall cease to have effect.
- (4) Where the Secretary of State gives a direction under this section, the inspector shall not make a final report to the Secretary of State unless—
 - (a) the direction was made on the grounds mentioned in subsection (2) and the Secretary of State directs the inspector to make a final report to him, or
 - (b) the inspector was appointed under section 432(1) (appointment in pursuance of order of the court).
- (5) An inspector shall comply with any direction given to him under this section.
- (6) In this section, a reference to an inspector’s investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary).”.
 - (2) In section 431 of that Act (inspectors’ powers during investigation) in subsection (1) for “report on them in such manner as he may direct” substitute “report the result of their investigations to him”.
 - (3) In section 432 of that Act (other company investigations) in subsection (1) for “report on them in such manner as he directs” substitute “report the result of their investigations to him”.
 - (4) In section 437 of that Act (inspectors’ reports)—
 - (a) in subsection (1) omit the second sentence, and
 - (b) subsections (1B) and (1C) shall cease to have effect.
 - (5) In section 442 of that Act (power to investigate company ownership), omit subsection (2).

677 Resignation, removal and replacement of inspectors

After section 446B of the Companies Act 1985 (c. 6) (inserted by section 676

above) insert –

“Resignation, removal and replacement of inspectors

446C Resignation and revocation of appointment

- (1) An inspector may resign by notice in writing to the Secretary of State.
- (2) The Secretary of State may revoke the appointment of an inspector by notice in writing to the inspector. 5

446D Appointment of replacement inspectors

- (1) Where –
 - (a) an inspector resigns,
 - (b) an inspector’s appointment is revoked, or 10
 - (c) an inspector dies,the Secretary of State may appoint one or more competent inspectors to continue the investigation.
- (2) An appointment under subsection (1) shall be treated for the purposes of this Part (apart from this section) as an appointment under the provision of this Part under which the former inspector was appointed. 15
- (3) The Secretary of State must exercise his power under subsection (1) so as to secure that at least one inspector continues the investigation.
- (4) Subsection (3) does not apply if –
 - (a) the Secretary of State could give any replacement inspector a direction under section 446B (termination of investigation), and 20
 - (b) such a direction would (under subsection (4) of that section) result in a final report not being made.
- (5) In this section, references to an investigation include any investigation the former inspector conducted under section 433(1) (power to investigate affairs of holding company or subsidiary).” 25

678 Power to obtain information from former inspectors etc

- (1) After section 446D of the Companies Act 1985 (c. 6) (inserted by section 677 above) insert –

“Power to obtain information from former inspectors etc 30

446E Obtaining information from former inspectors etc

- (1) This section applies to a person who was appointed as an inspector under this Part –
 - (a) who has resigned, or
 - (b) whose appointment has been revoked. 35
- (2) This section also applies to an inspector to whom the Secretary of State has given a direction under section 446B (termination of investigation).
- (3) The Secretary of State may direct a person to whom this section applies to produce documents obtained or generated by that person during the course of his investigation to – 40

-
- (a) the Secretary of State, or
 - (b) an inspector appointed under this Part.
- (4) The power under subsection (3) to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document – 5
- (a) in hard copy form, or
 - (b) in a form from which a hard copy can be readily obtained.
- (5) The Secretary of State may take copies of or extracts from a document produced in pursuance of this section.
- (6) The Secretary of State may direct a person to whom this section applies to inform him of any matters that came to that person’s knowledge as a result of his investigation. 10
- (7) A person shall comply with any direction given to him under this section.
- (8) In this section – 15
- (a) references to the investigation of a former inspector or inspector include any investigation he conducted under section 433(1) (power to investigate affairs of holding company or subsidiary), and
 - (b) “document” includes information recorded in any form.”. 20
- (2) In section 451A of that Act (disclosure of information by Secretary of State or inspector), in subsection (1)(a) for “446” substitute “446E”.
- (3) In section 452(1) of that Act (privileged information) for “446” substitute “446E”.
- 679 Power to require production of documents** 25
- (1) In section 434 of the Companies Act 1985 (production of documents and evidence to inspectors), for subsection (6) substitute –
- “(6) In this section “document” includes information recorded in any form.
- (7) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document – 30
- (a) in hard copy form, or
 - (b) in a form from which a hard copy can be readily obtained.
- (8) An inspector may take copies of or extracts from a document produced in pursuance of this section.”. 35
- (2) In section 447 of the Companies Act 1985 (power of Secretary of State to require documents and information), for subsection (9) substitute –
- “(9) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document – 40
- (a) in hard copy form, or
 - (b) in a form from which a hard copy can be readily obtained.”.

680 Disqualification orders: consequential amendments

In section 8(1A)(b)(i) of the Company Directors Disqualification Act 1986 (c. 46) (disqualification after investigation of company: meaning of “investigative material”) –

- (a) after “section” insert “437, 446E,” and 5
- (b) after “448” insert “, 451A”.

PART 26

DISSOLUTION AND RESTORATION TO THE REGISTER

Voluntary striking off

681 Voluntary striking off: extension to public companies 10

In section 652A of the Companies Act 1985 (c. 6) (power of registrar to strike private company off register on application) –

- (a) in the heading to the section, and
 - (b) in subsection (1),
- omit the word “private”. 15

Crown disclaimer of property

682 Time for making Crown disclaimer of property vesting as bona vacantia

In section 656 of the Companies Act 1985 (Crown disclaimer of property vesting as bona vacantia), for subsections (3) and (4) (time within which notice of disclaimer must be executed) substitute – 20

- “(3) A notice of disclaimer must be executed within three years after –
 - (a) the date on which the fact that the property may have vested in the Crown under section 654 first comes to the notice of the Crown representative, or
 - (b) if ownership of the property is not established at that date, the end of the period reasonably necessary for the Crown representative to establish the ownership of the property. 25
- (3A) If an application in writing is made to the Crown representative by a person interested in the property requiring him to decide whether he will or will not disclaim, any notice of disclaimer must be executed within twelve months after the making of the application or such further period as may be allowed by the court. 30
- (3B) A notice of disclaimer under this section is of no effect if it is shown to have been executed after the end of the period specified by subsection (3) or (3A).” 35

*Administrative restoration to the register***683 Application for administrative restoration to the register**

- (1) An application may be made to the registrar to restore to the register a company that has been struck off the register under section 652 of the Companies Act 1985 (c. 6) (power of registrar to strike off defunct company). 5
- (2) An application under this section may be made whether or not the company has in consequence also been dissolved (see section 652(5)).
- (3) An application under this section may only be made by a former director or former member of the company.
- (4) An application under this section may not be made after the end of the period of six years from the date of the dissolution of the company. 10
For this purpose an application is made when it is received by the registrar.

684 Requirements for administrative restoration

- (1) On an application under section 683 the registrar shall restore the company to the register if, and only if, the following conditions are met. 15
- (2) The first condition is that the company was carrying on business or in operation at the time of its striking off.
- (3) The second condition is that, if any property or right previously vested in or held on trust for the company has vested as *bona vacantia*, the Crown representative has signified to the registrar in writing consent to the company's restoration to the register. 20
- (4) It is the applicant's responsibility to obtain that consent and to pay any costs (in Scotland, expenses) of the Crown representative –
 - (a) in dealing with the property during the period of dissolution, or
 - (b) in connection with the proceedings on the application, 25
that may be demanded as a condition of giving consent.
- (5) The third condition is that the applicant has –
 - (a) delivered to the registrar such documents relating to the company as are necessary to bring up to date the records kept by the registrar, and
 - (b) paid any penalties under section 437 or corresponding earlier provisions (civil penalty for failure to deliver accounts) that were outstanding at the date of dissolution or striking off. 30
- (6) In this section the “Crown representative” means –
 - (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy; 35
 - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
 - (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
 - (d) in relation to other property, the Treasury Solicitor. 40

685 Application to be accompanied by statement of compliance

- (1) An application under section 683 (application for administrative restoration to the register) must be accompanied by a statement of compliance.
- (2) The statement of compliance required is a statement –
 - (a) that the person making the application has standing to apply (see subsection (3) of that section), and 5
 - (b) that the requirements for administrative restoration (see section 684) are met.
- (3) The registrar may accept the statement of compliance as sufficient evidence of those matters. 10

686 Registrar’s decision on application for administrative restoration

- (1) The registrar must give notice to the applicant of the decision on an application under section 683 (application for administrative restoration to the register).
- (2) If the decision is that the company should be restored to the register, the restoration takes effect as from the date that notice is sent. 15
- (3) In the case of such a decision, the registrar must –
 - (a) enter on the register a note of the date as from which the company’s restoration to the register takes effect, and
 - (b) cause notice of the restoration to be published –
 - (i) in the Gazette, or 20
 - (ii) in accordance with section 769 (alternative means of giving notice).
- (4) The notice under subsection (3)(b) must state –
 - (a) the name of the company or, if the company is restored to the register under a different name, that name and its former name, 25
 - (b) the company’s registered number, and
 - (c) the date as from which the restoration of the company to the register takes effect.

687 Effect of administrative restoration

- (1) The general effect of administrative restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register. 30
- (2) The company is not liable to a penalty under section 437 or any corresponding earlier provision (civil penalty for failure to deliver accounts) for a financial year in relation to which the period for filing accounts and reports ended –
 - (a) after the date of dissolution or striking off, and
 - (b) before the restoration of the company to the register. 35
- (3) The court may give such directions and make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register. 40
- (4) An application to the court for such directions or provision may be made any time within three years after the date of restoration of the company to the register.

*Restoration to the register by the court***688 Application to court for restoration to the register**

- (1) An application may be made to the court to restore to the register a company –
- (a) that has been dissolved under Chapter 4 of Part 9 of the Insolvency Act 1986 (c. 45) or Chapter 9 of Part 5 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (dissolution of company after winding up), 5
 - (b) that is deemed to have been dissolved under paragraph 84(6) of Schedule B1 to the Insolvency Act 1986 or paragraph 85(6) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (dissolution of company following administration), or 10
 - (c) that has been struck off the register –
 - (i) under section 652 of the Companies Act 1985 (c. 6) (power of registrar to strike off defunct company), or
 - (ii) under section 652A of that Act (voluntary striking off), 15
 whether or not the company has in consequence also been dissolved (see section 652(5) or 652A(5)).
- (2) An application under this section may be made by –
- (a) the Secretary of State,
 - (b) any former director of the company, 20
 - (c) any person having an interest in land in which the company had a superior or derivative interest,
 - (d) any person having an interest in land or other property –
 - (i) that was subject to rights vested in the company, or
 - (ii) that was benefited by obligations owed by the company, 25
 - (e) any person who but for the company’s dissolution would have been in a contractual relationship with it,
 - (f) any person with a potential legal claim against the company,
 - (g) any manager or trustee of a pension fund established for the benefit of employees of the company, 30
 - (h) any former member of the company (or the personal representatives of such a person),
 - (i) any person who was a creditor of the company at the time of its striking off or dissolution,
 - (j) any former liquidator of the company, 35
 - (k) where the company was struck off the register under section 652A of the Companies Act 1985, any person of a description specified by regulations under section 652B(6)(f) or 652C(2)(f) of that Act (persons entitled to notice of application for voluntary striking off),
- or by any other person appearing to the court to have an interest in the matter. 40

689 When application to the court may be made

- (1) An application to the court for restoration of a company to the register may be made at any time for the purpose of bringing proceedings against the company for damages for personal injury.

- (2) 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.
- (3) In making that decision the court must have regard to its power under section 691(3) (power to give consequential directions etc) to direct that the period between the dissolution (or striking off) of the company and the making of the order is not to count for the purposes of any such enactment. 5
- (4) In any other case an application to the court for restoration of a company to the register may not be made after the end of the period of six years from the date of the dissolution of the company, subject as follows. 10
- (5) In a case where –
- (a) the company has been struck off the register under section 652 of the Companies Act 1985 (c. 6) (power of registrar to strike off defunct company),
 - (b) an application to the registrar has been made under section 683 (application for administrative restoration to the register) within the time allowed for making such an application, and 15
 - (c) the registrar has refused the application,
- an application to the court under this section may be made within 28 days of notice of the registrar’s decision being issued by the registrar, even if the period of six years mentioned in subsection (4) above has expired. 20
- (6) For the purposes of this section –
- (a) “personal injury” includes any disease and any impairment of a person’s physical or mental condition; and
 - (b) references to damages for personal injury include – 25
 - (i) any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41) or section 14(2)(c) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (1937 c. 9 (N.I.)) (funeral expenses)), and
 - (ii) damages under the Fatal Accidents Act 1976 (c. 30), the Damages (Scotland) Act 1976 (c. 13) or the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I. 18)). 30

690 Decision on application for restoration by the court

- (1) On an application under section 688 the court may order the restoration of the company to the register – 35
- (a) if the company was struck off the register under section 652 of the Companies Act 1985 (power of registrar to strike off defunct companies) and the company was, at the time of the striking off, carrying on business or in operation;
 - (b) if the company was struck off the register under section 652A of that Act (voluntary striking off) and any of the requirements of section 652B or 652C of that Act was not complied with; 40
 - (c) if in any other case the court considers it just to do so.
- (2) If the court orders restoration of the company to the register, the restoration takes effect on a copy of the court’s order being delivered to the registrar. 45
- (3) The registrar must cause to be published –
- (a) in the Gazette, or

(b) in accordance with section 769 (alternative means of giving notice), notice of the restoration of the company to the register.

- (4) The notice must state –
- (a) the name of the company or, if the company is restored to the register under a different name, that name and its former name, 5
 - (b) the company’s registered number, and
 - (c) the date on which the restoration took effect.

691 Effect of court order for restoration to the register

- (1) The general effect of an order by the court for restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register. 10
- (2) The company is not liable to a penalty under section 437 or any corresponding earlier provision (civil penalty for failure to deliver accounts) for a financial year in relation to which the period for filing accounts and reports ended –
- (a) after the date of dissolution or striking off, and 15
 - (b) before the restoration of the company to the register.
- (3) The court may give such directions and make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register.
- (4) The court may also give directions as to – 20
- (a) the delivery to the registrar of such documents relating to the company as are necessary to bring up to date the records kept by the registrar,
 - (b) the payment of the costs (in Scotland, expenses) of the registrar in connection with the proceedings for the restoration of the company to the register, 25
 - (c) where any property or right previously vested in or held on trust for the company has vested as *bona vacantia*, the payment of the costs (in Scotland, expenses) of the Crown representative –
 - (i) in dealing with the property during the period of dissolution, or
 - (ii) in connection with the proceedings on the application. 30
- (5) In this section the “Crown representative” means –
- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
 - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall; 35
 - (c) in relation to property in Scotland, the Queen’s and Lord Treasurer’s Remembrancer;
 - (d) in relation to other property, the Treasury Solicitor.

Restoration to the register: supplementary provisions

692 Company’s name on restoration 40

- (1) A company is restored to the register with the name it had before it was dissolved or struck off the register, subject to the following provisions.

- (2) If at the date of restoration the company could not be registered under its former name without contravening section 67 (name not to be the same as another in the registrar’s index of company names), it must be restored to the register –
- (a) under another name specified – 5
 - (i) in the case of administrative restoration, in the application to the registrar, or
 - (ii) in the case of restoration under a court order, in the court’s order, or
 - (b) as if its registered number was also its name. 10
- References to a company’s being registered in a name and to registration, in that context, shall be read as including the company’s being restored to the register.
- (3) If a company is restored to the register under a name specified in the application to the registrar, the provisions of – 15
 - section 80 (change of name: registration and issue of new certificate of incorporation), and
 - section 81 (change of name: effect),apply as if the application to the registrar were notice of a change of name.
- (4) If a company is restored to the register under a name specified in the court’s order, the provisions of – 20
 - section 80 (change of name: registration and issue of new certificate of incorporation), and
 - section 81 (change of name: effect),apply as if the copy of the court order delivered to the registrar were notice of a change a name. 25
- (5) If the company is restored to the register as if its registered number was also its name –
- (a) the company must change its name within 14 days after the date of the restoration, 30
 - (b) the change may be made by resolution of the directors (without prejudice to any other method of changing the company’s name),
 - (c) the company must give notice to the registrar of the change, and
 - (d) sections 80 and 81 apply as regards the registration and effect of the change. 35
- (6) If the company fails to comply with subsection (5)(a) or (c) an offence is committed by –
- (a) the company, and
 - (b) every officer of the company who is in default.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, to a daily default fine not exceeding one-tenth of level 5 on the standard scale. 40

693 Restoration to the register: other amendments

- (1) In section 654 of the Companies Act 1985 (c. 6) (property of dissolved company to be bona vacantia), in subsection (2) for “any order made by the court under 45

section 651 or 653” substitute “the possible restoration of the company to the register under sections 683 to 691 of the Company Law Reform Act 2006”.

- (2) For section 655 of that Act (effect of s.654 on company’s revival after dissolution) substitute –

“655 Effect of restoration to the register where property has vested as bona vacantia 5

- (1) The person in whom any property or right is vested by section 654 may dispose of, or of an interest in, that property or right despite the fact that the company may be restored to the register under sections 683 to 691 of the Company Law Reform Act 2006. 10
- (2) If the company is restored to the register –
- (a) the restoration does not affect the disposition (but without prejudice to its effect in relation to any other property or right previously vested in or held on trust for the company), and
- (b) the Crown or, as the case may be, the Duke of Cornwall shall pay to the company an amount equal to – 15
- (i) the amount of any consideration received for the property or right or, as the case may be, the interest in it, or
- (ii) the value of any such consideration at the time of the disposition, 20
- or, if no consideration was received an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.
- (3) There may be deducted from the amount payable under subsection (2)(b) the reasonable costs of the Crown representative in connection with the disposition (to the extent that they have not been paid as a condition of administrative restoration or pursuant to a court order for restoration). 25
- (4) Where a liability accrues under subsection (2) in respect of any property or right which before the restoration of the company to the register had accrued as *bona vacantia* to the Duchy of Lancaster, the Attorney General of that Duchy shall represent Her Majesty in any proceedings arising in connection with that liability. 30
- (5) Where a liability accrues under subsection (2) in respect of any property or right which before the restoration of the company to the register had accrued as *bona vacantia* to the Duchy of Cornwall, such persons as the Duke of Cornwall (or other possessor for the time being of the Duchy) may appoint shall represent the Duke (or other possessor) in any proceedings arising out of that liability. 35 40
- (6) In this section the “Crown representative” means –
- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
- (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall; 45
- (c) in relation to property in Scotland, the Queen’s and Lord Treasurer’s Remembrancer;
- (d) in relation to other property, the Treasury Solicitor.”.

PART 27

UK COMPANIES NOT FORMED UNDER THE COMPANIES ACTS

CHAPTER 1

COMPANIES NOT FORMED UNDER THE COMPANIES ACTS BUT AUTHORISED TO REGISTER

694	Companies authorised to register under the Companies Acts	5
(1)	This section applies to –	
	(a) any company that was in existence on 2nd November 1862 (including any company registered under the Joint Stock Companies Acts), and	
	(b) any company formed after that date (whether before or after the commencement of this Act) –	10
	(i) in pursuance of an Act of Parliament other than the Companies Acts or any of the former Companies Acts,	
	(ii) in pursuance of letters patent, or	
	(iii) that is otherwise duly constituted according to law.	
(2)	Any such company may on making application register under this Act.	15
(3)	Subject to the following provisions, it may register as an unlimited company, as a company limited by shares or as a company limited by guarantee.	
(4)	A company having the liability of its members limited by Act of Parliament or letters patent –	
	(a) may not register under this section unless it is a joint stock company, and	20
	(b) may not register under this section as an unlimited company or a company limited by guarantee.	
(5)	A company that is not a joint stock company may not register under this section as a company limited by shares.	25
(6)	The registration of a company under this section is not invalid by reason that it has taken place with a view to the company’s being wound up.	
695	Definition of “joint stock company”	
(1)	For the purposes of section 694 (companies authorised to register under the Companies Acts) “joint stock company” means a company –	30
	(a) having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and	
	(b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons.	35
(2)	Such a company when registered with limited liability under the Companies Acts is deemed a company limited by shares.	
696	Power to make provision by regulations	
(1)	The Secretary of State may make provision by regulations –	40

- (a) for and in connection with registration under section 694 (companies not formed under the Companies Acts but authorised to register), and
 - (b) as to the application to companies so registered of the provisions of the Companies Acts.
- (2) Without prejudice to the generality of that power, regulations under this section may make provision corresponding to any provision formerly made by Chapter 2 of Part 22 of the Companies Act 1985 (c. 6). 5
- (3) Regulations under this section are subject to negative resolution procedure.

697 Application of provisions to existing companies

The provisions of the Companies Acts apply to companies registered but not formed under any of the former Companies Acts in the same manner as they apply to companies registered under section 694. 10

CHAPTER 2

UNREGISTERED COMPANIES

698 Unregistered companies 15

- (1) This section applies to bodies corporate incorporated in and having a principal place of business in the United Kingdom, other than –
- (a) bodies incorporated by, or registered under, a public general Act of Parliament;
 - (b) bodies not formed for the purpose of carrying on a business that has for its object the acquisition of gain by the body or its individual members; 20
 - (c) bodies for the time being exempted from this section by direction of the Secretary of State;
 - (d) open-ended investment companies.
- (2) The Secretary of State may make provision by regulations applying specified provisions of the Companies Acts to all, or any specified description of, the bodies to which this section applies. 25
- (3) The regulations may provide that the specified provisions of the Companies Acts apply subject to any specified limitations and to such adaptations and modifications (if any) as may be specified. 30
- (4) This section does not –
- (a) repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which provisions of the Companies Acts are applied by regulations under this section, or 35
 - (b) restrict the power of Her Majesty to grant a charter in lieu or supplementary to any such charter.

But in relation to any such body the operation of any such enactment, charter or instrument is suspended in so far as it is inconsistent with any of those provisions as they apply for the time being to that body. 40

- (5) Regulations under this section are subject to negative resolution procedure.

PART 28

OVERSEAS COMPANIES

Introductory

699 Overseas companies

In the Companies Acts an “overseas company” means a company incorporated outside the United Kingdom. 5

Registration of particulars

700 Duty to register particulars

- (1) The Secretary of State may make provision by regulations requiring an overseas company – 10
- (a) to deliver to the registrar for registration a return containing specified particulars, and
 - (b) to deliver to the registrar with the return specified documents.
- (2) The regulations – 15
- (a) must, in the case of a company other than a Gibraltar company, require the company to register particulars if the company opens a branch in the United Kingdom, and 15
 - (b) may, in the case of a Gibraltar company, require the company to register particulars if the company opens a branch in the United Kingdom, and 20
 - (c) may, in any case, require the registration of particulars in such other circumstances as may be specified.
- (3) In subsection (2) – 25
- “branch” means a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC);
 - “Gibraltar company” means a company incorporated in Gibraltar.
- (4) The regulations may provide that where a company has registered particulars under this section and any alteration is made – 30
- (a) in the specified particulars, or
 - (b) in any document delivered with the return,
- the company must deliver to the registrar for registration a return containing specified particulars of the alteration.
- (5) The regulations may make provision – 35
- (a) requiring the return under this section to be delivered for registration to the registrar for a specified part of the United Kingdom, and
 - (b) requiring it to be so delivered before the end of a specified period.
- (6) The regulations may make different provision according to – 40
- (a) the place where the company is incorporated, and
 - (b) the activities carried on (or proposed to be carried on) by it.
- This is without prejudice to the general power to make different provision for different cases.

- (7) Regulations under this section are subject to affirmative resolution procedure.

701 Registered name of overseas company

- (1) Regulations under section 700 (duty to register particulars) must require an overseas company that is required to register particulars to state the name under which it proposes to be registered. 5
- (2) This may be –
- (a) the company’s corporate name (that is, its name under the law of the country or territory in which it is incorporated) or
 - (b) an alternative name specified in accordance with section 702.
- (3) Subject only to subsection (5), an EEA company may always be registered under its corporate name. 10
- (4) In any other case, the following provisions of Part 5 (a company’s name) apply in relation to the registration of the name of an overseas company –
- (a) section 54 (prohibited names);
 - (b) sections 55 to 57 (sensitive words and expressions); 15
 - (c) section 66 (inappropriate use of indications of company type or legal form);
 - (d) sections 67 to 74 (similarity to other names);
 - (e) section 75 (provision of misleading information etc);
 - (f) section 76 (misleading indication of activities). 20
- (5) The provisions of section 58 (permitted characters etc) apply in every case.
- (6) Any reference in the provisions mentioned in subsection (4) or (5) to a change of name shall be read as a reference to registration of a different name under section 702.

702 Registration under alternative name 25

- (1) An overseas company that is required to register particulars under section 700 may at any time deliver to the registrar for registration a statement specifying a name, other than its corporate name, under which it proposes to carry on business in the United Kingdom.
- (2) An overseas company that has registered an alternative name may at any time deliver to the registrar of companies for registration a statement specifying a different name under which it proposes to carry on business in the United Kingdom (which may be its corporate name or a further alternative) in substitution for the name previously registered. 30
- (3) The name by which an overseas company is for the time being registered under this section is, for all purposes of the law applying in the United Kingdom, deemed to be the company’s corporate name. 35
- (4) This does not –
- (a) affect the references in this section or section 701 to the company’s corporate name, 40
 - (b) affect any rights or obligation of the company, or
 - (c) render defective any legal proceedings by or against the company.

- (5) Any legal proceedings that might have been continued or commenced against the company by its corporate name, or any name previously registered under this section, may be continued or commenced against it by its name for the time being so registered.

Other requirements 5

703 Accounts and reports: general

- (1) The Secretary of State may make provision by regulations requiring an overseas company that is required to register particulars under section 700 –
(a) to prepare the like accounts and directors’ report, and
(b) cause to be prepared such an auditor’s report, 10
as would be required if the company were formed and registered under this Act.
- (2) The regulations may for this purpose apply, with or without modifications, all or any of the provisions of –
Part 15 (accounts and reports), and 15
Part 16 (audit).
- (3) The Secretary of State may make provision by regulations requiring an overseas company to deliver to the registrar copies of –
(a) the accounts and reports prepared in accordance with the regulations, or 20
(b) the accounts and reports that it is required to prepare and have audited under the law of the country in which it is incorporated.
- (4) Regulations under this section are subject to negative resolution procedure.

704 Accounts and reports: credit or financial institutions

- (1) This section applies to a credit or financial institution – 25
(a) that is incorporated or otherwise formed outside the United Kingdom and Gibraltar,
(b) whose head office is outside the United Kingdom and Gibraltar, and
(c) that has a branch in the United Kingdom.
- (2) In subsection (1) “branch” means a place of business that forms a legally dependent part of the institution and conducts directly all or some of the operations inherent in its business. 30
- (3) The Secretary of State may make provision by regulations requiring an institution to which this section applies –
(a) to prepare the like accounts and directors’ report, and 35
(b) cause to be prepared such an auditor’s report,
as would be required if the institution were a company formed and registered under this Act.
- (4) The regulations may for this purpose apply, with or without modifications, all or any of the provisions of – 40
Part 15 (accounts and reports), and
Part 16 (audit).

- (5) The Secretary of State may make provision by regulations requiring an institution to which this section applies to deliver to the registrar copies of—
- (a) accounts and reports prepared in accordance with the regulations, or
 - (b) accounts and reports that it is required to prepare and have audited under the law of the country in which the institution has its head office. 5
- (6) Regulations under this section are subject to negative resolution procedure.

705 Trading disclosures

- (1) The Secretary of State may by regulations make provision requiring overseas companies carrying on business in the United Kingdom—
- (a) to display specified information in specified locations, 10
 - (b) to state specified information in specified descriptions of document or communication, and
 - (c) to provide specified information on request to those they deal with in the course of their business.
- (2) The regulations— 15
- (a) shall in every case require disclosure of the name under which the company is registered to carry on business in the United Kingdom, and
 - (b) may make provision as to the manner in which any specified information is to be displayed, stated or provided.
- (3) The regulations may make provision corresponding to that made by— 20
- section 83 (civil consequences of failure to make required disclosure), and
 - section 84 (criminal consequences of failure to make required disclosure).
- (4) Regulations under this section are subject to affirmative resolution procedure.

706 Other returns etc

- (1) This section applies to overseas companies that are required to register particulars under section 700. 25
- (2) The Secretary of State may make provision by regulations requiring the delivery to the registrar of returns—
- (a) by a company to which this section applies that—
 - (i) is being wound up, or 30
 - (ii) becomes or ceases to be subject to insolvency proceedings, or an arrangement or composition or any analogous proceedings;
 - (b) by the liquidator of a company to which this section applies.
- (3) The regulations may specify— 35
- (a) the circumstances in which a return is to be made,
 - (b) the particulars to be given in it, and
 - (c) the period within which it is to be made.
- (4) The Secretary of State may make provision by regulations requiring notice to be given to the registrar of the appointment in relation to a company to which this section applies of a judicial factor (in Scotland). 40
- (5) The regulations may include provision corresponding to any provision made by section 801 of this Act (duty to notify registrar of certain appointments).

- (6) Regulations under this section are subject to affirmative resolution procedure.

Supplementary

707 Offences

- (1) Regulations under this Part may specify the person or persons responsible for complying with any specified requirement of the regulations. 5
- (2) Regulations under this Part may make provision for offences, including provision as to—
- (a) the person or persons liable in the case of any specified contravention of the regulations, and
 - (b) circumstances that are, or are not, to be a defence on a charge of such an offence. 10
- (3) The regulations must not provide—
- (a) for imprisonment, or
 - (b) for the imposition on summary conviction of a fine exceeding level 5 on the standard scale and, in the case of continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 15
- (4) In this section “specified” means specified in the regulations.

708 Disclosure of individual’s residential address: protection from disclosure

Where regulations under section 700 (overseas companies: duty to register particulars) require an overseas company to register particulars of an individual’s usual residential address, they must contain provision corresponding to that made by Chapter 8 of Part 10 (directors’ residential addresses: protection from disclosure). 20

709 Requirement to identify persons authorised to accept service of documents

Regulations under section 700 (overseas companies: duty to register particulars) must require an overseas company to register— 25

- (a) particulars identifying every person resident in the United Kingdom authorised to accept service of documents on behalf of the company, or
- (b) a statement that there is no such person.

710 Registrar to whom returns, notices etc to be delivered 30

- (1) This section applies to an overseas company that is required to register or has registered particulars under section 700 in more than one part of the United Kingdom.
- (2) The Secretary of State may provide by regulations that, in the case of such a company, anything authorised or required to be delivered to the registrar under this Part is to be delivered— 35
- (a) to the registrar for each part of the United Kingdom in which the company is required to register or has registered particulars, or
 - (b) to the registrar for such part or parts of the United Kingdom as may be specified in or determined in accordance with the regulations. 40

- (3) Regulations under this section are subject to negative resolution procedure.

711 Duty to give notice of ceasing to have registrable presence

- (1) The Secretary of State may make provision by regulations requiring an overseas company –
- (a) if it has registered particulars following the opening of a branch, in accordance with regulations under section 700(2)(a) or (b), to give notice to the registrar if it closes that branch; 5
 - (b) if it has registered particulars in other circumstances, in accordance with regulations under section 700(2)(c), to give notice to the registrar if the circumstances that gave rise to the obligation to register particulars cease to obtain. 10
- (2) The regulations must provide for the notice to be given to the registrar for the part of the United Kingdom to which the original return of particulars was delivered.
- (3) The regulations may specify the period within which notice must be given. 15
- (4) Regulations under this section are subject to negative resolution procedure.

712 Application of provisions in case of relocation of branch

- (1) For the purposes of this Part the relocation of a branch from one part of the United Kingdom to another counts as the closing of one branch and the opening of another. 20
- (2) The relocation of a branch within the same part of the United Kingdom does not.

PART 29

THE REGISTRAR OF COMPANIES

The registrar 25

713 The registrar

- (1) There shall continue to be –
- (a) a registrar of companies for England and Wales,
 - (b) a registrar of companies for Scotland, and
 - (c) a registrar of companies for Northern Ireland. 30
- (2) The registrars shall be appointed by the Secretary of State.
- (3) In the Companies Acts “the registrar of companies” and “the registrar” mean the registrar of companies for England and Wales, Scotland or Northern Ireland, as the case may require.
- (4) References in the Companies Acts to registration in a particular part of the United Kingdom are to registration by the registrar for that part of the United Kingdom. 35

714 The registrar's functions

- (1) The registrar shall continue –
- (a) to perform the functions conferred on the registrar –
 - (i) under the Companies Acts, and
 - (ii) under the enactments listed in subsection (2), and
 - (b) to perform such functions on behalf of the Secretary of State, in relation to the registration of companies or other matters, as the Secretary of State may from time to time direct.
- (2) The enactments are –
- the Joint Stock Companies Acts; 10
 - the Newspaper Libel and Registration Act 1881 (c. 60);
 - the Limited Partnerships Act 1907 (c. 24);
 - section 53 of the Industrial and Provident Societies Act 1965 (c. 12) or, for Northern Ireland, section 62 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)); 15
 - the Insolvency Act 1986 (c. 45) or, for Northern Ireland, the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
 - section 12 of the Statutory Water Companies Act 1991 (c. 58);
 - sections 3, 4, 6, 63 and 64 of, and Schedule 1 to, the Housing Act 1996 (c. 52) or, for Northern Ireland, Articles 3 and 16 to 32 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)); 20
 - sections 2, 4 and 26 of the Commonwealth Development Corporation Act 1999 (c. 20);
 - Part 6 and section 366 of the Financial Services and Markets Act 2000 (c. 8);
 - the Limited Liability Partnerships Act 2000 (c. 12); 25
 - section 14 of the Insolvency Act 2000 (c. 39) or, for Northern Ireland, Article 11 of the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6));
 - section 121 of the Land Registration Act 2002 (c. 9);
 - section 877 of this Act. 30
- (3) References in this Act to the functions of the registrar are to functions within subsection (1)(a) or (b).

715 The registrar's official seal

The registrar shall have an official seal for the authentication of documents in connection with the performance of the registrar's functions. 35

716 Fees payable to registrar

- (1) The Secretary of State may make provision by regulations requiring the payment to the registrar of fees in respect of –
- (a) the performance of any of the registrar's functions, or
 - (b) the provision by the registrar of services or facilities for purposes incidental to, or otherwise connected with, the performance of any of the registrar's functions. 40
- (2) The matters for which fees may be charged include –
- (a) the performance of a duty imposed on the registrar or the Secretary of State, 45

- (b) the receipt of documents delivered to the registrar, and
 - (c) the inspection, or provision of copies, of documents kept by the registrar.
- (3) The regulations may –
- (a) provide for the amount of the fees to be fixed by or determined under the regulations; 5
 - (b) provide for different fees to be payable in respect of the same matter in different circumstances;
 - (c) specify the person by whom any fee payable under the regulations is to be paid; 10
 - (d) specify when and how fees are to be paid.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) In respect of the performance of functions or the provision of services or facilities –
- (a) for which fees are not provided for by regulations, or 15
 - (b) in circumstances other than those for which fees are provided for by regulations,
- the registrar may determine from time to time what fees (if any) are chargeable.
- (6) Fees received by the registrar are to be paid into the Consolidated Fund.
- (7) The Limited Partnerships Act 1907 (c. 24) is amended as follows – 20
- (a) in section 16(1) (inspection of statements registered) –
 - (i) omit the words “, and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding 5p for each inspection”, and
 - (ii) omit the words from “and there shall be paid for such certificate” to the end; 25
 - (b) in section 17 (power to make rules) –
 - (i) omit the words “(but as to fees with the concurrence of the Treasury)”, and
 - (ii) omit paragraph (a). 30

Certificates of incorporation

717 Public notice of issue of certificate of incorporation

- (1) The registrar must cause to be published –
- (a) in the Gazette, or
 - (b) in accordance with section 769 (alternative means of giving public notice), 35
- notice of the issue by the registrar of any certificate of incorporation of a company.
- (2) The notice must state the name and registered number of the company and the date of issue of the certificate. 40
- (3) This section applies to a certificate of incorporation issued under –
- (a) section 80 (change of name),
 - (b) section 88 (Welsh companies), or

(c) any provision of Part 7 (re-registration),
as well as to the certificate issued on a company’s formation.

718 Right to certificate of incorporation

Any person may require the registrar to provide him with a copy of any certificate of incorporation of a company, signed by the registrar or authenticated by the registrar’s seal. 5

Registered numbers

719 Company’s registered numbers

- (1) The registrar shall allocate to every company a number, which shall be known as the company’s registered number. 10
- (2) Companies’ registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may determine.
- (3) The registrar may on adopting a new form of registered number make such changes of existing registered numbers as appear 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. 15
- (5) For a period of three years beginning with that date any requirement to disclose the company’s registered number imposed by regulations under section 82 or section 705 (trading disclosures) is satisfied by the use of either the old number or the new. 20
- (6) In this section “company” includes –
 - (a) an overseas company whose particulars have been registered under section 700, other than a company that appears to the registrar not to be required to register particulars under that section;
 - (b) any body to which any provision of the Companies Acts applies by virtue of regulations under section 698 (unregistered companies). 25

720 Registered numbers of branches of overseas company

- (1) The registrar shall allocate to every branch of an overseas company whose particulars are registered under section 700 a number, which shall be known as the branch’s registered number. 30
- (2) Branches’ registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may determine.
- (3) The registrar may on adopting a new form of registered number make such changes of existing registered numbers as appear necessary.
- (4) A change of a branch’s registered number has effect from the date on which the company is notified by the registrar of the change. 35
- (5) For a period of three years beginning with that date any requirement to disclose the branch’s registered number imposed by regulations under section 705 (trading disclosures) is satisfied by the use of either the old number or the new. 40

*Delivery of documents to the registrar***721 Registrar's requirements**

- (1) The registrar may impose requirements as to the form, authentication and manner of delivery of documents required or authorised to be delivered to the registrar under any enactment. 5
- (2) Where a document required or authorised to be delivered to the registrar under any enactment is required –
- (a) to be certified as an accurate translation, or
 - (b) to be certified as a correct copy or verified,
- the registrar may impose requirements as to the person, or description of person, by whom the certificate or verification is to be given. 10
The power conferred by subsection (1) is exercisable in relation to the certificate or verification as if it were a separate document.
- (3) As regards the form of the document, the registrar may –
- (a) require the contents of the document to be in a standard form; 15
 - (b) impose requirements for the purpose of enabling the document to be scanned or copied.
- (4) As regards authentication, the registrar may –
- (a) require the document to be authenticated by a particular person or a person of a particular description; 20
 - (b) specify the means of authentication of any information which any relevant enactment or the registrar requires to be authenticated;
 - (c) require the document to contain or be accompanied by the name or registered number of the company to which it relates (or both).
- (5) As regards the manner of delivery, the registrar may specify requirements as to –
- (a) the physical form of the document (for example, hard copy or electronic form);
 - (b) the means to be used for delivering the document (for example, by post or electronic means); 30
 - (c) the address to which the document is to be sent;
 - (d) in the case of a document to be delivered by electronic means, the hardware and software to be used, and technical specifications (for example, matters relating to protocol, security, anti-virus protection or encryption). 35
- (6) The registrar must secure that as from 1st January 2007 all documents subject to the Directive disclosure requirements (see section 731) may be delivered to the registrar by electronic means.
- (7) The power conferred by this section does not authorise the registrar to require documents to be delivered by electronic means (see section 722). 40
- (8) Requirements imposed under this section must not be inconsistent with requirements imposed by any enactment for the purposes of the provision requiring or authorising the delivery of the document to the registrar.

722 Power to require delivery by electronic means

- (1) The Secretary of State may make regulations requiring documents that are authorised or required to be delivered to the registrar to be delivered by electronic means.
- (2) Any such requirement to deliver documents by electronic means is effective only if registrar's rules have been published with respect to the detailed requirements for such delivery. 5
- (3) Regulations under this section are subject to affirmative resolution procedure.

723 Agreement for delivery by electronic means

- (1) The registrar may agree with a company that documents relating to the company that are required or authorised to be delivered to the registrar – 10
 - (a) will be delivered by electronic means, except as provided for in the agreement, and
 - (b) will conform to such requirements as may be specified in the agreement or specified by the registrar in accordance with the agreement. 15
- (2) An agreement under this section may relate to all or any description of documents to be delivered to the registrar.
- (3) Documents in relation to which an agreement is in force under this section must be delivered in accordance with the agreement.

724 Document not delivered until received 20

- (1) A document is not delivered to the registrar until it is received by the registrar.
- (2) Provision may be made by registrar's rules as to when a document is to be regarded as received.

Defective delivery

725 Defective delivery 25

- (1) A document delivered to the registrar is not properly delivered unless all the following requirements are met –
 - (a) the requirements of the provision under which the document is to be delivered to the registrar as regards –
 - (i) the contents of the document, and 30
 - (ii) form, authentication and manner of delivery;
 - (b) any applicable requirements under –
 - section 721 (registrar's requirements),
 - section 722 (power to require delivery by electronic means), or 35
 - section 723 (agreement for delivery by electronic means);
 - (c) any requirements of this Part as to the language in which the document is drawn up and delivered or as to its being accompanied on delivery by a certified translation into English;
 - (d) in so far as it consists of or includes names and addresses, any requirements of this Part as to permitted characters, letters or symbols 40

- or as to its being accompanied on delivery by a certificate as to the transliteration of any element;
- (e) any requirement of regulations under section 735 (use of unique identifiers);
 - (f) any requirements as regards payment of a fee in respect of its receipt by the registrar. 5
- (2) The registrar may accept (and register) a document that does not comply with those requirements.
- (3) The acceptance (or registration) of such a document by the registrar does not affect – 10
- (a) any liability for failure to comply with the requirements of the provision under which the document is delivered to the registrar as regards the contents of the document;
 - (b) the continuing obligation to comply with the requirements mentioned in subsection (1); 15
 - (c) the exercise of the registrar’s powers under –
section 726 (informal correction), or
section 729 (notice to remedy defective delivery).
- (4) No objection may be taken to the legal effect of any such action taken by the registrar on the ground that the requirements mentioned in subsection (1) above are not met. 20

726 Informal correction of document

- (1) A document delivered to the registrar may be corrected by the registrar if it appears to the registrar to be incomplete or internally inconsistent.
- (2) This power is exercisable only – 25
- (a) on instructions, and
 - (b) if the company has given (and has not withdrawn) its consent to instructions being given under this section.
- (3) The following requirements must be met as regards the instructions – 30
- (a) the instructions must be given in response to an enquiry by the registrar;
 - (b) the registrar must be satisfied that the person giving the instructions is authorised to do so – 35
 - (i) by the person by whom the document was delivered, or
 - (ii) by the company to which the document relates;
 - (c) the instructions must meet any requirements of registrar’s rules as to –
 - (i) the form and manner in which they are given, and
 - (ii) authentication.
- (4) The company’s consent to instructions being given under this section (and any withdrawal of such consent) – 40
- (a) may be in hard copy or electronic form, and
 - (b) must be notified to the registrar.
- (5) This section applies in relation to documents delivered under Part 12 of the Companies Act 1985 (c. 6) (registration of charges) by a person other than the

company as if the references to the company were to the company or the person by whom the document was delivered.

- (6) A document that is corrected under this section is treated, for the purposes of any enactment relating to its delivery, as having been delivered when the correction is made. 5

727 Voluntary replacement of document previously delivered

- (1) The registrar may accept a replacement for a document previously delivered that did not comply with the requirements for proper delivery.
- (2) A replacement document must not be accepted unless the registrar is satisfied that it is delivered by – 10
- (a) the person by whom the original document was delivered, or
 - (b) the company to which the original document relates,
- and that it complies with the requirements for proper delivery.
- (3) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the replacement in a form and manner enabling it to be associated with the original. 15
- (4) For the purposes of this section the requirements for proper delivery are those listed in section 725(1).

728 Exclusion of unnecessary material

- (1) If a document delivered to the registrar contains unnecessary material that in the opinion of the registrar ought to be excluded from the register, the provisions of – 20
- section 725(2) to (4) (defective delivery),
 - section 726 (informal correction of document), and 25
 - section 729 (registrar’s notice to remedy defective delivery),
- apply as they apply to a document that does not meet the requirements listed in section 725(1) (requirements for proper delivery).
- (2) “Unnecessary material” means material that – 30
- (a) is not needed to comply with an obligation under any enactment, and
 - (b) is not specifically authorised to be delivered to the registrar.
- (3) For this purpose an obligation to deliver a document of a particular description, or conforming to certain requirements, is regarded as not extending to anything that is not needed for a document of that description or, as the case may be, conforming to those requirements. 35

729 Registrar’s notice to remedy defective delivery

- (1) This section applies where a document delivered to the registrar – 40
- (a) does not meet the requirements for proper delivery, and
 - (b) is not either corrected under section 726 (informal correction by registrar) or replaced under section 727 (voluntary replacement).
- The “requirements for proper delivery” are those mentioned in section 725(1).
- (2) The registrar may give notice –

- (a) to the person by whom the document was delivered (if the identity, and name and address of that person are known), or
 - (b) to the company to which the document relates (if notice cannot be given under paragraph (a) and the identity of that company is known).
- (3) The notice must – 5
- (a) state in what respects the document does not appear to meet the requirements for proper delivery,
 - (b) state the date on which it is issued, and
 - (c) require a replacement document complying with the requirements for proper delivery to be delivered to the registrar within 14 days after that date. 10
- (4) If no replacement document is delivered within the period specified, an offence is committed by – 15
- (a) the company, and
 - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

Public notice of receipt of certain documents 20

730 Public notice of receipt of certain documents

- (1) The registrar must cause to be published – 25
- (a) in the Gazette, or
 - (b) in accordance with section 769 (alternative means of giving public notice),
- notice of the receipt by the registrar of any document that, on receipt, is subject to the Directive disclosure requirements (see section 731).
- (2) The notice must state the name and registered number of the company, the description of document and the date of receipt.
- (3) The registrar is not required to cause notice of the receipt of a document to be published before the date of incorporation of the company to which the document relates. 30

731 Documents subject to Directive disclosure requirements

- (1) The documents subject to the “Directive disclosure requirements” are as follows. 35
- The requirements referred to are those of Article 3 of the First Company Law Directive (68/151/EEC), as amended, extended and applied.
- (2) In the case of every company –
- A. *Constitutional documents*
- 1. The company’s memorandum and articles. 40
 - 2. Any amendment of the company’s articles (including every resolution or agreement required to be embodied in or annexed to copies of the company’s articles issued by the company).

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3. After any amendment of the company’s articles, the text of the articles as amended.
 4. Any notice of a change of the company’s name.
 - B. Directors*
 1. The statement of proposed officers required on formation of the company. 5
 2. Notification of any change among the company’s directors.
 3. Notification of any change in the particulars of directors required to be delivered to the registrar.
 - C. Accounts, reports and returns*
 1. All documents required to be delivered to the registrar under section 425 (annual accounts and reports). 10
 2. The company’s annual return.
 - D. Registered office*

Notification of any change of the company’s registered office.
 - E. Winding up* 15
 1. Copy of any winding-up order in respect of the company.
 2. Notice of the appointment of liquidators.
 3. Order for the dissolution of a company on a winding up.
 4. Return by a liquidator of the final meeting of a company on a winding up.
 - (3) In the case of a public company – 20
 - Share capital*
 1. Any statement of capital and initial shareholdings.
 2. Copy of any resolution under section 550 or 551 of this Act (disapplication of pre-emption rights).
 3. Copy of any report under section 103 or 104 of the Companies Act 1985 (c. 6) as to the value of a non-cash asset. 25
 4. Any statement of compliance delivered under section 537 of this Act (statement that company meets conditions for issue of trading certificate).
 5. Notification (under section 122 of the Companies Act 1985) of the redemption of shares and the statement of capital accompanying it. 30
 6. Statement or notice delivered under section 128 of that Act (registration of particulars of special rights).
 7. Statement of capital accompanying order delivered under section 138 of that Act (order of court confirming reduction of capital).
 8. Statement of capital accompanying return delivered under section 169 of that Act (return of details of company’s purchase of own shares). 35
 9. Statement of capital accompanying notice given under section 589 of this Act (notice by company of redenomination of shares).
 10. Statement of capital accompanying notice given under section 591 of this Act (notice by company of reduction of capital in connection with redenomination of shares). 40
 11. Any return of allotment and the statement of capital accompanying it.
 - Mergers and divisions*
 1. Copy of any draft of the terms of a scheme required to be delivered to the registrar under paragraph 2(1) of Schedule 15B to the Companies Act 1985. 45
 2. Copy of any order under section 425(2) or 427 of that Act in respect of a compromise or arrangement to which section 427A of that Act applies.
 - (4) Where a private company re-registers as a public company (see section 96) –

- (a) the last statement of capital relating to the company received by the registrar under any provision of the Companies Acts becomes subject to the Directive disclosure requirements, and
 - (b) section 730 (public notice of receipt of certain documents) applies as if the statement had been received by the registrar when the re-registration takes effect. 5
- (5) In the case of an overseas company, such particulars, returns and other documents required to be delivered under Part 28 of this Act as may be specified by the Secretary of State by regulations.
- (6) Regulations under subsection (5) are subject to negative resolution procedure. 10

732 Effect of failure to give public notice

- (1) A company is not entitled to rely against other persons on the happening of any event to which this section applies unless –
- (a) the event has been officially notified at the material time, or
 - (b) the company shows that the person concerned knew of the event at the material time. 15
- (2) The events to which this section applies are –
- (a) an amendment of the company’s articles,
 - (b) a change among the company’s directors,
 - (c) (as regards service of any document on the company) a change of the company’s registered office, 20
 - (d) the making of a winding-up order in respect of the company, or
 - (e) the appointment of a liquidator in a voluntary winding up of the company.
- (3) If the material time falls – 25
- (a) on or before the 15th day after the date of official notification, or
 - (b) where the 15th day was not a working day, on or before the next day that was,
- the company is not entitled to rely on the happening of the event as against a person who shows that he was unavoidably prevented from knowing of the event at that time. 30
- (4) “Official notification” means –
- (a) in relation to an amendment of the company’s articles, notification in accordance with section 730 (public notice of receipt by registrar of certain documents) of the amendment and the amended text of the articles; 35
 - (b) in relation to anything else stated in a document subject to the Directive disclosure requirements, notification of that document in accordance with that section;
 - (c) in relation to the appointment of a liquidator in a voluntary winding up, notification of that event in accordance with section 109 of the Insolvency Act 1986 (c. 45) or Article 95 of the Insolvency (Northern Ireland) Order 1989 (S.I.1989/2405 (N.I. 19)). 40

The register

733 The register

- (1) The registrar shall continue to keep records of—
 - (a) the information contained in documents delivered to the registrar under any enactment, 5
 - (b) certificates of incorporation issued by the registrar, and
 - (c) certificates issued by the registrar under section 401(2) or 418 of the Companies Act 1985 (c. 6) (certificates of registration of charge).
- (2) The records relating to companies are referred to collectively in the Companies Acts as “the register”. 10
- (3) Information deriving from documents subject to the Directive disclosure requirements (see section 731) that are delivered to the registrar on or after 1st January 2007 must be kept by the registrar in electronic form.
- (4) Subject to that, information contained in documents delivered to the registrar may be recorded and kept in any form the registrar thinks fit, provided it is possible to inspect it and produce a copy of it. 15
This is sufficient compliance with any duty of the registrar to keep, file or register the document or to record the information contained in it.
- (5) The records kept by the registrar must be such that information relating to a company is associated with that company, in such manner as the registrar may determine, so as to enable all the information relating to the company to be retrieved. 20

734 Annotation of the register

- (1) The registrar must place a note in the register recording—
 - (a) the date on which a document is delivered to the registrar; 25
 - (b) if a document is corrected under section 726, the nature and date of the correction;
 - (c) if a document is replaced (whether or not material derived from it is removed), the fact that it has been replaced and the date of delivery of the replacement; 30
 - (d) if material is removed—
 - (i) what was removed (giving a general description of its contents),
 - (ii) under what power, and
 - (iii) the date on which that was done.
- (2) The Secretary of State may make provision by regulations— 35
 - (a) authorising or requiring the registrar to annotate the register in such other circumstances as may be specified in the regulations, and
 - (b) as to the contents of any such annotation.
- (3) No annotation is required in the case of a document that by virtue of section 725 (defective delivery) is not registered. 40
- (4) A note may be removed if it no longer serves any useful purpose.

- (5) Any duty or power of the registrar with respect to annotation of the register is subject to the court’s power under section 750 (powers of court on ordering removal of material from the register) to direct—
- (a) that a note be removed from the register, or
 - (b) that no note shall be made of the removal of material that is the subject of the court’s order. 5
- (6) Notes placed in the register in accordance with subsection (1), or in pursuance of regulations under subsection (2), are part of the register for all purposes of the Companies Acts.
- (7) Regulations under this section are subject to negative resolution procedure. 10

735 Allocation of unique identifiers

- (1) The Secretary of State may make provision for the use, in connection with the register, of reference numbers (“unique identifiers”) to identify each person who—
- (a) is a director of a company, 15
 - (b) is secretary (or a joint secretary) of a public company, or
 - (c) in the case of an overseas company whose particulars are registered under section 700, holds any such position as may be specified for the purposes of this section by regulations under that section.
- (2) The regulations may—
- (a) provide that a unique identifier may be in such form, consisting of one or more sequences of letters or numbers, as the registrar may from time to time determine;
 - (b) make provision for the allocation of unique identifiers by the registrar;
 - (c) require there to be included, in any specified description of documents delivered to the registrar, as well as a statement of the person’s name— 25
 - (i) a statement of the person’s unique identifier, or
 - (ii) a statement that the person has not been allocated a unique identifier;
 - (d) enable the registrar to take steps where a person appears to have more than one unique identifier to discontinue the use of all but one of them. 30
- (3) The regulations may contain provision for the application of the scheme in relation to persons appointed, and documents registered, before the commencement of this Act.
- (4) The regulations may make different provision for different descriptions of person and different descriptions of document. 35
- (5) Regulations under this section are subject to affirmative resolution procedure.

736 Preservation of original documents

- (1) The originals of documents delivered to the registrar in hard copy form must be kept for three years after they are received by the registrar, after which they may be destroyed provided the information contained in them has been recorded in the register. 40
- This is subject to section 740(3) (extent of obligation to retain material not available for public inspection).

- (2) The registrar is under no obligation to keep the originals of documents delivered in electronic form, provided the information contained in them has been recorded in the register.
- (3) This section applies to documents held by the registrar when this section comes into force as well as to documents subsequently received. 5

737 Records relating to companies that have been dissolved etc

- (1) This section applies where –
 - (a) a company is dissolved,
 - (b) an overseas company ceases to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 700, or 10
 - (c) a credit or financial institution ceases to be within section 704 (overseas institutions required to file accounts with the registrar).
- (2) At any time after two years from the date on which it appears to the registrar that – 15
 - (a) the company has been dissolved,
 - (b) the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 700, or
 - (c) the credit or financial institution has ceased to be within section 704 (overseas institutions required to file accounts with the registrar), 20the registrar may direct that records relating to the company or institution may be removed to the Public Record Office or, as the case may be, the Public Records Office for Northern Ireland.
- (3) Records in respect of which such a direction is given shall be disposed of under the enactments relating to that Office and the rules made under them. 25
- (4) In subsection (1)(a) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.
- (5) This section does not extend to Scotland.

Inspection etc of the register 30

738 Inspection of the register

- (1) Any person may inspect the register.
- (2) The right of inspection extends to the originals of documents delivered to the registrar in hard copy form if, and only if, the record kept by the registrar of the contents of the document is illegible or unavailable. 35
The period for which such originals are to be kept is limited by section 736(1).
- (3) This section has effect subject to section 740 (material not available for public inspection).

739 Right to copy of material on the register

- (1) Any person may require a copy of any material on the register. 40

- (2) The fee for any such copy of material derived from a document subject to the Directive disclosure requirements (see section 731), whether in hard copy or electronic form, must not exceed the administrative cost of providing it.
- (3) This section has effect subject to section 740 (material not available for public inspection). 5

740 Material not available for public inspection

- (1) The following material must not be made available by the registrar for public inspection –
- (a) protected information within section 225(1) (directors' residential addresses: restriction on disclosure by registrar) or any corresponding provision of regulations under section 700 (overseas companies); 10
 - (b) the contents of any document sent to the registrar containing views expressed pursuant to section 57 (comments on proposal by company to use certain words or expressions in company name);
 - (c) any application to the registrar under section 683 (application for administrative restoration to the register) that has not yet been determined or was not successful; 15
 - (d) any document received by the registrar in connection with the giving or withdrawal of consent under section 726 (informal correction of documents); 20
 - (e) any application or other document delivered to the registrar under section 741 (application to make address unavailable for public inspection) and any address in respect of which such an application is successful;
 - (f) any application or other document delivered to the registrar under section 748 (application for rectification of register); 25
 - (g) any court order under section 749 (rectification of the register under court order) that the court has directed under section 750 (powers of court on ordering removal of material from the register) is not to be made available for public inspection; 30
 - (h) the contents of –
 - (i) any instrument creating or evidencing a charge and delivered to the registrar under section 395 of the Companies Act 1985 (c. 6) (registration of company charges: England and Wales or Northern Ireland), or 35
 - (ii) any certified copy of an instrument creating or evidencing a charge and delivered to the registrar under section 410 of that Act (registration of company charges: Scotland);
 - (i) any e-mail address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone; 40
 - (j) the contents of any documents held by the registrar pending a decision of the registrar of community interest companies under section 36 or 38 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (decision on eligibility for registration as community interest company) and that the registrar is not later required to record; 45
 - (k) any other material excluded from public inspection by or under any other enactment.

- (2) A restriction applying by reference to material deriving from a particular description of document does not affect the availability for public inspection of the same information contained in material derived from another description of document in relation to which no such restriction applies.
- (3) Material to which this section applies need not be retained by the registrar for longer than appears to the registrar reasonably necessary for the purposes for which the material was delivered to the registrar. 5

741 Application to registrar to make address unavailable for public inspection

- (1) The Secretary of State may make provision by regulations requiring the registrar, on application, to make an address on the register unavailable for public inspection. 10
- (2) The regulations may make provision as to –
 - (a) who may make an application,
 - (b) the grounds on which an application may be made,
 - (c) the information to be included in and documents to accompany an application, 15
 - (d) the notice to be given of an application and of its outcome, and
 - (e) how an application is to be determined.
- (3) Provision under subsection (2)(e) may in particular –
 - (a) confer a discretion on the registrar; 20
 - (b) provide for a question to be referred to a person other than the registrar for the purposes of determining the application.
- (4) An application must specify the address to be removed from the register and indicate where on the register it is.
- (5) The regulations may provide – 25
 - (a) that an address is not to be made unavailable for public inspection under this section unless replaced by a service address, and
 - (b) that in such a case the application must specify a service address.
- (6) Regulations under this section are subject to affirmative resolution procedure.

742 Form of application for inspection or copy 30

- (1) The registrar may specify the form and manner in which application is to be made for –
 - (a) inspection under section 738, or
 - (b) a copy under section 739.
- (2) As from 1st January 2007, applications in respect of documents subject to the Directive disclosure requirements may be submitted to the registrar in hard copy or electronic form, as the applicant chooses. 35
This does not affect the registrar’s power under subsection (1) above to impose requirements in respect of other matters.

743 Form and manner in which copies to be provided 40

- (1) The following provisions apply as regards the form and manner in which copies are to be provided under section 739.

- (2) As from 1st January 2007, copies of documents subject to the Directive disclosure requirements must be provided in hard copy or electronic form, as the applicant chooses.
This is subject to the following proviso.
- (3) The registrar is not obliged by subsection (2) to provide copies in electronic form of a document that was delivered to the registrar in hard copy form if – 5
- (a) the document was delivered to the registrar on or before 31st December 1996, or
 - (b) the document was delivered to the registrar on or before 31st December 2006 and ten years or more elapsed between the date of delivery and the date of receipt of the first application for a copy on or after 1st January 2007. 10
- (4) Subject to the preceding provisions of this section, the registrar may determine the form and manner in which copies are to be provided.
- 744 Certification of copies as accurate** 15
- (1) Copies provided under section 739 in hard copy form must be certified as true copies unless the applicant dispenses with such certification.
- (2) Copies so provided in electronic form must not be certified as true copies unless the applicant expressly requests such certification.
- (3) A copy provided under section 739, certified by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of the original document, is in all legal proceedings admissible in evidence – 20
- (a) as of equal validity with the original document, and
 - (b) as evidence (in Scotland, sufficient evidence) of any fact stated in the original document of which direct oral evidence would be admissible. 25
- (4) The Secretary of State may make provision by regulations as to the manner in which such a certificate is to be provided in a case where the copy is provided in electronic form.
- (5) Except in the case of documents that are subject to the Directive disclosure requirements (see section 731), copies provided by the registrar may, instead of being certified in writing to be an accurate record, be sealed with the registrar's official seal. 30
- 745 Issue of process for production of records kept by the registrar**
- (1) No process for compelling the production of a record kept by the registrar shall issue from any court except with the permission of the court. 35
- (2) Any such process shall bear on it a statement that it is issued with the permission of the court.
- Correction or removal of material on the register*
- 746 Registrar's notice to resolve inconsistency on the register**
- (1) Where it appears to the registrar that the information contained in a document delivered to the registrar is inconsistent with other information on the register, the registrar may give notice to the company to which the document relates – 40

- (a) stating in what respects the information contained in it appears to be inconsistent with other information on the register, and
 - (b) requiring the company to take steps to resolve the inconsistency.
- (2) The notice must –
 - (a) state the date on which it is issued, and 5
 - (b) require the delivery to the registrar, within 14 days after that date, of such replacement or additional documents as may be required to resolve the inconsistency.
- (3) If the necessary documents are not delivered within the period specified, an offence is committed by – 10
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 15

747 Administrative removal of material from the register

- (1) The registrar may remove from the register anything that there was power, but no duty, to include.
- (2) This power is exercisable, in particular, so as to remove – 20
 - (a) unnecessary material within the meaning of section 728, and
 - (b) material derived from a document that has been replaced under –
 - section 727 (voluntary replacement of document previously delivered),
 - section 729 (notice to remedy defective delivery), or 25
 - section 746 (notice to remedy inconsistency on the register).
- (3) This section does not authorise the removal from the register of –
 - (a) anything whose registration has had legal consequences in relation to the company as regards –
 - (i) its formation, 30
 - (ii) a change of name,
 - (iii) its re-registration,
 - (iv) its becoming or ceasing to be a community interest company,
 - (v) a reduction of capital,
 - (vi) a change of registered office, 35
 - (vii) the registration of a charge, or
 - (viii) its dissolution;
 - (b) an address that is a person's registered address for the purposes of section 791 (service of documents on directors, secretaries and others).
- (4) On or before removing any material under this section (otherwise than at the request of the company) the registrar must give notice – 40
 - (a) to the person by whom the material was delivered (if the identity, and name and address of that person are known), or
 - (b) to the company to which the material relates (if notice cannot be given under paragraph (a) and the identity of that company is known). 45

- (5) The notice must—
- (a) state what material the registrar proposes to remove, or has removed, and on what grounds, and
 - (b) state the date on which it is issued.

748 Rectification of register on application to registrar 5

- (1) The Secretary of State may make provision by regulations requiring the registrar, on application, to remove from the register material of a description specified in the regulations that—
- (a) derives from anything invalid or ineffective or that was done without the authority of the company, or 10
 - (b) is factually inaccurate, or is derived from something that is factually inaccurate or forged.
- (2) The regulations may make provision as to—
- (a) who may make an application,
 - (b) the information to be included in and documents to accompany an application, 15
 - (c) the notice to be given of an application and of its outcome,
 - (d) a period in which objections to an application may be made, and
 - (e) how an application is to be determined.
- (3) An application must— 20
- (a) specify what is to be removed from the register and indicate where on the register it is, and
 - (b) be accompanied by a statement that the material specified in the application complies with this section and the regulations.
- (4) If no objections are made to the application, the registrar may accept the statement as sufficient evidence that the material specified in the application should be removed from the register. 25
- (5) Where anything is removed from the register under this section the registration of which had legal consequences as mentioned in section 747(3), any person appearing to the court to have a sufficient interest may apply to the court for such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register. 30
- (6) Regulations under this section are subject to affirmative resolution procedure.

749 Rectification of the register under court order 35

- (1) The registrar shall remove from the register any material—
- (a) that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the company, or
 - (b) that a court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged, 40
- and that the court directs should be removed from the register.
- (2) The court order must specify what is to be removed from the register and indicate where on the register it is.

- (3) The court must not make an order for the removal from the register of anything the registration of which had legal consequences as mentioned in section 747(3) unless satisfied –
 - (a) that the presence of the material on the register has caused, or may cause, damage to the company, and 5
 - (b) that the company’s interest in removing the material outweighs any interest of other persons in the material continuing to appear on the register.
- (4) Where in such a case the court does make an order for removal, it may make such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register. 10
- (5) A copy of the court’s order must be sent to the registrar for registration.
- (6) This section does not apply where the court has other, specific powers to deal with the matter, for example under –
 - (a) the provisions of Part 15 of this Act relating to the revision of defective accounts and reports, or 15
 - (b) section 404 or 420 of the Companies Act 1985 (rectification of the register of charges).

750 Powers of court on ordering removal of material from the register

- (1) Where the court makes an order for the removal of anything from the register under section 749 (rectification of the register), it may give directions under this section. 20
- (2) It may direct that any note on the register that is related to the material that is the subject of the court’s order shall be removed from the register.
- (3) It may direct that its order shall not be available for public inspection as part of the register. 25
- (4) It may direct –
 - (a) that no note shall be made on the register as a result of its order, or
 - (b) that any such note shall be restricted to such matters as may be specified by the court. 30
- (5) The court shall not give any direction under this section unless it is satisfied –
 - (a) that –
 - (i) the presence on the register of the note or, as the case may be, of an unrestricted note, or
 - (ii) the availability for public inspection of the court’s order, may cause damage to the company, and 35
 - (b) that the company’s interest in non-disclosure outweighs any interest of other persons in disclosure.

751 Public notice of removal of certain material from the register

- (1) The registrar must cause to be published – 40
 - (a) in the Gazette, or
 - (b) in accordance with section 769 (alternative means of giving public notice),

notice of the removal from the register of any document subject to the Directive disclosure requirements (see section 731) or of any material derived from such a document.

- (2) The notice must state the name and registered number of the company, the description of document and the date of receipt. 5

The registrar’s index of company names

752 The registrar’s index of company names

- (1) The registrar of companies must keep an index of the names of the companies and other bodies to which this section applies.
This is “the registrar’s index of company names”. 10
- (2) This section applies to –
- (a) companies as defined by section 1 of this Act;
 - (b) companies registered under the Companies Acts by virtue of section 694 (companies not formed under the Companies Acts but able to register); 15
 - (c) any body to which any provision of the Companies Acts applies by virtue of regulations under section 698 (unregistered companies); and
 - (d) overseas companies that have registered particulars with the registrar under Part 28, other than companies that appear to the registrar not to be required to do so. 20
- (3) This section also applies to –
- (a) limited partnerships registered in the United Kingdom;
 - (b) limited liability partnerships incorporated in the United Kingdom;
 - (c) European Economic Interest Groupings registered in the United Kingdom; 25
 - (d) open-ended investment companies authorised in the United Kingdom;
 - (e) societies registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)).
- (4) The Secretary of State may by order amend subsection (3) – 30
- (a) by the addition of any description of body;
 - (b) by the deletion of any description of body.
- (5) Any such order is subject to negative resolution procedure.

753 Right to inspect index

Any person may inspect the registrar’s index of company names. 35

754 Power to amend enactments relating to bodies other than companies

- (1) The Secretary of State may by regulations amend the enactments relating to any description of body for the time being within section 752(3) (bodies other than companies whose names are to be entered in the registrar’s index), so as to – 40

- (a) require the registrar to be provided with information as to the names of bodies registered, incorporated, authorised or otherwise regulated under those enactments, and
- (b) make provision in relation to such bodies corresponding to that made by – 5
 - section 67 (company name not to be the same as another in the index), and
 - sections 68 and 69 (power to direct change of company name in case of similarity to existing name).
- (2) Regulations under this section are subject to affirmative resolution procedure. 10

Language requirements: translation

755 Application of language requirements

- (1) The provisions listed below apply to all documents required to be delivered to the registrar under any provision of – 15
 - (a) the Companies Acts, or
 - (b) the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) The Secretary of State may make provision by regulations applying all or any of the listed provisions, with or without modifications, in relation to documents delivered to the registrar under any other enactment. 20
- (3) The provisions are –
 - section 756 (documents to be drawn up and delivered in English),
 - section 757 (documents relating to Welsh companies),
 - section 758 (documents that may be drawn up and delivered in other languages), 25
 - section 760 (certified translations).
- (4) Regulations under this section are subject to the negative resolution procedure.

756 Documents to be drawn up and delivered in English

- (1) The general rule is that all documents required to be delivered to the registrar must be drawn up and delivered in English. 30
- (2) This is subject to –
 - section 757 (documents relating to Welsh companies) and
 - section 758 (documents that may be drawn up and delivered in other languages).

757 Documents relating to Welsh companies 35

- (1) Documents relating to a Welsh company may be drawn up and delivered to the registrar in Welsh.
- (2) On delivery to the registrar any such document must be accompanied by a certified translation into English, unless it is – 40
 - (a) of a description excepted from that requirement by regulations made by the Secretary of State, or

- (b) in a form prescribed in Welsh (or partly in Welsh and partly in English) by virtue of section 26 of the Welsh Language Act 1993 (c. 38).
- (3) Where a document is properly delivered to the registrar in Welsh without a certified translation into English, the registrar must obtain such a translation if the document is to be available for public inspection. 5
The translation is treated as if delivered to the registrar in accordance with the same provision as the original.
- (4) A Welsh company may deliver to the registrar a certified translation into Welsh of any document in English that relates to the company and is or has been delivered to the registrar. 10
- (5) Section 758 (which requires certified translations into English of documents delivered to the registrar in another language) does not apply to a document relating to a Welsh company that is drawn up and delivered in Welsh.

758 Documents that may be drawn up and delivered in other languages

- (1) Documents to which this section applies may be drawn up and delivered to the registrar in a language other than English, but when delivered to the registrar they must be accompanied by a certified translation into English. 15
- (2) This section applies to –
- (a) agreements required to be forwarded to the registrar under Chapter 3 of Part 3 of this Act (agreements affecting the company’s constitution); 20
 - (b) documents required to be delivered under section 382(2)(e) or section 383(2)(f) (company included in accounts of larger group: required to deliver copy of group accounts);
 - (c) instruments or copy instruments required to be delivered under Part 12 of the Companies Act 1985 (c. 6) (registration of charges); 25
 - (d) documents of any other description specified in regulations made by the Secretary of State.
- (3) Regulations under this section are subject to negative resolution procedure.

759 Voluntary filing of translations

- (1) A company may deliver to the registrar one or more certified translations of any document relating to the company that is or has been delivered to the registrar. 30
- (2) The Secretary of State may by regulations specify –
- (a) the languages, and
 - (b) the descriptions of document, 35
- in relation to which this facility is available.
- (3) The regulations must provide that it is available as from 1st January 2007 –
- (a) in relation to all the official languages of the European Union, and
 - (b) in relation to all documents subject to the Directive disclosure requirements (see section 731). 40
- (4) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the translation in a form and manner enabling it to be associated with the original.

- (5) Regulations under this section are subject to negative resolution procedure.
- (6) This section does not apply where the original document was delivered to the registrar before this section came into force.

760 Certified translations

- (1) In this Part a “certified translation” means a translation certified to be a correct translation. 5
- (2) In the case of any discrepancy between the original language version of a document and a certified translation –
 - (a) the company may not rely on the translation as against a third party, but 10
 - (b) a third party may rely on the translation unless the company shows that the third party had knowledge of the original.
- (3) A “third party” means a person other than the company or the registrar.

Language requirements: transliteration

761 Transliteration of names and addresses: permitted characters 15

- (1) Names and addresses in a document delivered to the registrar must contain only letters, characters and symbols (including accents and other diacritical marks) that are permitted.
- (2) The Secretary of State may make provision by regulations –
 - (a) as to the letters, characters and symbols (including accents and other diacritical marks) that are permitted, and 20
 - (b) permitting or requiring the delivery of documents in which names and addresses have not been transliterated into a permitted form.
- (3) Regulations under this section are subject to negative resolution procedure.

762 Transliteration of names and addresses: voluntary transliteration into Roman characters 25

- (1) Where a name or address is or has been delivered to the registrar in a permitted form using other than Roman characters, the company may deliver to the registrar a transliteration into Roman characters.
- (2) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the transliteration in a form and manner enabling it to be associated with the original. 30

763 Transliteration of names and addresses: certification

- (1) The Secretary of State may make provision by regulations requiring the certification of transliterations and prescribing the form of certification. 35
- (2) Different provision may be made for compulsory and voluntary transliterations.
- (3) Regulations under this section are subject to negative resolution procedure.

*Supplementary provisions***764 General false statement offence**

- (1) It is an offence for a person knowingly or recklessly –
- (a) to deliver or cause to be delivered to the registrar, for any purpose of the Companies Acts, a document, or 5
 - (b) to make to the registrar, for any such purpose, a statement, that is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both); 10
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both). 15

765 Enforcement of company’s filing obligations

- (1) This section applies where a company has made default in complying with any obligation under the Companies Acts – 20
- (a) to deliver a document to the registrar, or
 - (b) to give notice to the registrar of any matter.
- (2) The registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the obligation.
- (3) If the company fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the company, may apply to the court for an order directing the company, and any specified officer of it, to make good the default within a specified time. 25
- (4) The court’s order may provide that all costs (in Scotland, expenses) of or incidental to the application are to be borne by the company or by any officers of it responsible for the default. 30
- (5) This section does not affect the operation of any enactment making it an offence, or imposing a civil penalty, for the default.

766 Application of provisions about documents and delivery

- (1) In this Part – 35
- (a) “document” means information recorded in any form, and
 - (b) references to delivering a document include forwarding, lodging, registering, sending, producing or submitting it or (in the case of a notice) giving it.
- (2) Except as otherwise provided, this Part applies in relation to the supply to the registrar of information otherwise than in documentary form as it applies in relation to the delivery of a document. 40

767 Provisions requiring copies of court orders to be delivered to the registrar

In the following provisions (which require an office copy of certain court orders to be delivered to the registrar) for “an office copy” substitute “a copy” –

- section 425(3) of the Companies Act 1985 (c. 6) (order sanctioning compromise or arrangement); 5
- section 427(5) of that Act (order sanctioning compromise or arrangement);
- section 201(4) of the Insolvency Act 1986 (c. 45) and Article 166(4) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (order deferring date at which dissolution of company after winding up is to take effect). 10

768 Supplementary provisions relating to electronic communications

- (1) Registrar’s rules may require a company to give any necessary consents to the use of electronic means for communications by the registrar to the company as a condition of making use of any facility to deliver material to the registrar by electronic means. 15
- (2) A document that is required to be signed by the registrar or authenticated by the registrar’s seal shall, if sent by electronic means, be authenticated in such manner as may be specified by registrar’s rules.

769 Alternative to publication in the Gazette 20

- (1) Notices that would otherwise need to be published by the registrar in the Gazette may instead be published by such means as may from time to time be approved by the registrar in accordance with regulations made by the Secretary of State.
- (2) The Secretary of State may make provision by regulations as to what alternative means may be approved. 25
- (3) The regulations may, in particular –
 - (a) require the use of electronic means;
 - (b) require the same means to be used –
 - (i) for all notices or for all notices of specified descriptions, and 30
 - (ii) whether the company is registered in England and Wales, Scotland or Northern Ireland;
 - (c) impose conditions as to the manner in which access to the notices is to be made available.
- (4) Regulations under this section are subject to negative resolution procedure. 35
- (5) Before starting to publish notices by means approved under this section the registrar must publish at least one notice to that effect in the Gazette.
- (6) Nothing in this section prevents the registrar from giving public notice both in the Gazette and by means approved under this section. 40
In that case, the requirement of public notice is met when notice is first given by either means.

770 Registrar’s rules

- (1) Where any provision of this Part enables the registrar to make provision, or impose requirements, as to any matter, the registrar may make such provision or impose such requirements by means of rules under this section. This is without prejudice to the making of such provision or the imposing of such requirements by other means. 5
- (2) Registrar’s rules –
- (a) may make different provision for different cases, and
 - (b) may allow the registrar to disapply or modify any of the rules.
- (3) The registrar must – 10
- (a) publicise the rules in a manner appropriate to bring them to the notice of persons affected by them, and
 - (b) make copies of the rules available to the public (in hard copy or electronic form).

771 Payments into the Consolidated Fund 15

Nothing in the Companies Acts or any other enactment as to the payment of receipts into the Consolidated Fund shall be read as affecting the operation in relation to the registrar of section 3(1) of the Government Trading Funds Act 1973 (c. 63).

772 Contracting out of registrar’s functions 20

- (1) Where by virtue of an order made under section 69 of the Deregulation and Contracting Out Act 1994 (c. 40) a person is authorised by the registrar to accept delivery of any class of documents that are under any enactment to be delivered to the registrar, the registrar may direct that documents of that class shall be delivered to a specified address of the authorised person. 25
Any such direction must be printed and made available to the public (with or without payment).
- (2) A document of that class that is delivered to an address other than the specified address is treated as not having been delivered.
- (3) Registrar’s rules are not subordinate legislation for the purposes of section 71 of the Deregulation and Contracting Out Act 1994 (functions excluded from contracting out). 30

773 Application of Part to overseas companies

Unless the context otherwise requires, the provisions of this Part apply to an overseas company as they apply to a company registered under the Companies Acts. 35

PART 30

OFFENCES UNDER THE COMPANIES ACTS

Liability of officer in default

774 Liability of officer in default

- (1) This section has effect for the purposes of any provision of the Companies Acts to the effect that, in the event of contravention of an enactment in relation to a company, an offence is committed by every officer of the company who is in default. 5
- (2) For this purpose “officer” includes –
 - (a) any director, manager or secretary, and 10
 - (b) any person who is to be treated as an officer of the company for the purposes of the provision in question.
- (3) An officer is “in default” for the purposes of the provision if he authorises or permits, participates in, or fails to take all reasonable steps to prevent, the contravention. 15

775 Liability of company as officer in default

- (1) Where a company is an officer of another company, it does not commit an offence as an officer in default unless one of its officers is in default.
- (2) Where any such offence is committed by a company the officer in question also commits the offence and is liable to be proceeded against and punished accordingly. 20
- (3) In this section “officer” and “in default” have the meanings given by section 774.

776 Application to bodies other than companies

- (1) Section 774 (liability of officers in default) applies to a body other than a company as it applies to a company. 25
- (2) As it applies in relation to a body corporate other than a company –
 - (a) the reference to a director of the company shall be read as referring –
 - (i) where the body’s affairs are managed by its members, to a member of the body, 30
 - (ii) in any other case, to any corresponding officer of the body, and
 - (b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the body.
- (3) As it applies in relation to a partnership –
 - (a) the reference to a director of the company shall be read as referring to a member of the partnership, and 35
 - (b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the partnership.
- (4) As it applies in relation to an unincorporated body other than a partnership –
 - (a) the reference to a director of the company shall be read as referring – 40

- (i) where the body’s affairs are managed by its members, to a member of the body,
- (ii) in any other case, to a member of the governing body, and
- (b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the body.

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Offences under the Companies Act 1985

777 Amendments of the Companies Act 1985

Schedule 4 contains amendments of the Companies Act 1985 (c. 6) relating to offences.

General provisions

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778 Meaning of “daily default fine”

- (1) This section defines what is meant in the Companies Acts where it is provided that a person guilty of an offence is liable on summary conviction to a fine not exceeding a specified amount “and in the case of continued contravention to a daily default fine” not exceeding a specified amount.
- (2) This means that the person is liable on a second or subsequent summary conviction of the offence to a fine not exceeding the latter amount for each day on which the contravention is continued (instead of being liable to a fine not exceeding the former amount).

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779 Consents required for certain prosecutions

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- (1) This section applies to proceedings for an offence under any of the following provisions –
 - section 442, 444 or 649 of this Act (offences of unauthorised disclosure of information);
 - section 653 of this Act (failure to comply with rules about takeover bid documents);
 - section 448, 449, 450, 451 or 453A of the Companies Act 1985 (offences in connection with company investigations);
 - section 455 of that Act (offence of attempting to evade restrictions on shares).
- (2) No such proceedings are to be brought in England and Wales except by or with the consent of –
 - (a) in the case of an offence under –
 - (i) section 442, 444 or 649 of this Act,
 - (ii) section 653 of this Act, or
 - (iii) section 448, 449, 450, 451 or 453A of the Companies Act 1985, the Secretary of State or the Director of Public Prosecutions;
 - (b) in the case of an offence under section 455 of the Companies Act 1985, the Secretary of State.
- (3) No such proceedings are to be brought in Northern Ireland except by or with the consent of –

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- (a) in the case of an offence under –
 - (i) section 442, 444 or 649 of this Act,
 - (ii) section 653 of this Act, or
 - (iii) section 448, 449, 450, 451 or 453A of the Companies Act 1985 (c. 6),the Secretary of State or the Director of Public Prosecutions for Northern Ireland; 5
 - (b) in the case of an offence under section 455 of the Companies Act 1985, the Secretary of State.
- 780 Summary proceedings: venue** 10
- (1) Summary proceedings for any offence under the Companies Acts may be taken –
 - (a) against a body corporate, at any place at which the body has a place of business, and
 - (b) against any other person, at any place at which he is for the time being. 15
 - (2) This is without prejudice to any jurisdiction exercisable apart from this section.
- 781 Summary proceedings: time limit for proceedings**
- (1) An information relating to an offence under the Companies Acts that is triable by a magistrates’ court in England and Wales may be so tried if it is laid –
 - (a) at any time within three years after the commission of the offence, and 20
 - (b) within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.
 - (2) Summary proceedings in Scotland for an offence under the Companies Acts –
 - (a) must not be commenced after the expiration of three years from the commission of the offence; 25
 - (b) subject to that, may be commenced at any time –
 - (i) within twelve months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to his knowledge, or 30
 - (ii) where such evidence was reported to him by the Secretary of State, within twelve months after the date on which it came to the knowledge of the latter.
- Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date when proceedings deemed to be commenced) applies for the purposes of this subsection as for the purposes of that section. 35
- (3) A magistrates’ court in Northern Ireland has jurisdiction to hear and determine a complaint charging the commission of a summary offence under the Companies Acts provided that the complaint is made –
 - (a) within three years from the time when the offence was committed, and 40
 - (b) within twelve months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.

(4)	For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his notice is conclusive evidence.	5
782	Legal professional privilege	
	In proceedings against a person for an offence under the Companies Acts, nothing in those Acts is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).	10
783	Proceedings against unincorporated bodies	
(1)	Proceedings for an offence under the Companies Acts alleged to have been committed by an unincorporated body must be brought in the name of the body (and not in that of any of its members).	
(2)	For the purposes of such proceedings—	15
	(a) any rules of court relating to the service of documents have effect as if the body were a body corporate, and	
	(b) the following provisions apply as they apply in relation to a body corporate—	
	(i) in England and Wales, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43),	20
	(ii) in Scotland, sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46),	
	(iii) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Article 166 of and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).	25
(3)	A fine imposed on an unincorporated body on its conviction of an offence under the Companies Acts must be paid out of the funds of the body.	30
784	Imprisonment on summary conviction in England and Wales: transitory provision	
(1)	This section applies to any provision of the Companies Acts that provides that a person guilty of an offence is liable on summary conviction in England and Wales to imprisonment for a term not exceeding twelve months.	35
(2)	In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” substitute “six months”.	
<i>Supplementary</i>		
785	Transitional provision	40
	The provisions of this Part do not apply to offences committed before the commencement of the relevant provision.	

PART 31

COMPANIES: SUPPLEMENTARY PROVISIONS

Company records

786 Meaning of “company records”

In this Part “company records” means any register, index, accounting records, agreement, memorandum, minutes or other document required by the Companies Acts to be kept by a company. 5

787 Form of company records

- (1) Company records –
 - (a) may be kept in hard copy or electronic form, and 10
 - (b) may be arranged in such manner as the directors of the company think fit,
provided the information in question is adequately recorded for future reference.
- (2) Where the records are kept in electronic form, they must be capable of being reproduced in hard copy form. 15
- (3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 20
- (5) Any provision of an instrument made by a company before 12th February 1979 that requires a register of holders of the company’s debentures to be kept in hard copy form is to be read as requiring it to be kept in hard copy or electronic form. 25

788 Regulations about inspection of records and provision of copies

- (1) The Secretary of State may make provision by regulations as to the obligations of a company that is required by any provision of the Companies Acts –
 - (a) to make available for inspection any company records, or 30
 - (b) to provide copies of any company records.
- (2) A company that fails to comply with the regulations is treated as having refused inspection or, as the case may be, having failed to provide a copy.
- (3) The regulations may –
 - (a) 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, and 35
 - (b) 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. 40

- (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) Nothing in any provision of this Act or in the regulations shall be read as preventing a company –
- (a) from affording more extensive facilities than are required by the regulations, or
 - (b) where a fee may be charged, from charging a lesser fee than that prescribed or none at all.
- (6) Regulations under this section are subject to negative resolution procedure.
- 789 Duty to take precautions against falsification** 10
- (1) Where company records are kept otherwise than in bound books, adequate precautions must be taken –
- (a) to guard against falsification, and
 - (b) to facilitate the discovery of falsification.
- (2) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default. 15
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 20
- (4) This section does not apply to the documents required to be kept under –
- (a) section 212 (copy of director’s service contract or memorandum of its terms); or
 - (b) section 220 (qualifying third party indemnity provision).
- Service addresses* 25
- 790 Service of documents on company**
- (1) A document may be served on a company registered under the Companies Acts by leaving it at, or sending it by post to, the company’s registered office.
- (2) A document may be served on an overseas company whose particulars are registered under section 700 – 30
- (a) by leaving it at, or sending it by post to, the registered address of any person resident in the United Kingdom who is authorised to accept service of documents on the company’s behalf, or
 - (b) if there is no such person, or if any such person refuses service or service cannot for any other reason be effected, by leaving it at or sending by post to any place of business of the company in the United Kingdom. 35
- (3) Where a company registered in Scotland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company’s principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company. 40

Where process is served on a company under this subsection, the person issuing out the process must send a copy of it by post to the company's registered office.

791 Service of documents on directors, secretaries and others

- (1) A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address. 5
- (2) This section applies to –
 - (a) a director or secretary of a company;
 - (b) in the case of an overseas company whose particulars are registered under section 700, a person holding any such position as may be specified for the purposes of this section by regulations under that section; 10
 - (c) a person appointed in relation to a company as –
 - (i) a judicial factor (in Scotland),
 - (ii) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or 15
 - (iii) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
- (3) This section applies whatever the purpose of the document in question. 20
It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.
- (4) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection. 25
- (5) If notice of a change of that address is given to the registrar, a person may validly serve a document at the address previously registered until the end of the period of 14 days beginning with the date on which notice of the change is registered. 30
- (6) Service may not be effected by virtue of this section at an address –
 - (a) if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment; 35
 - (b) in the case of a person holding any such position as is mentioned in subsection (2)(b), if the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 700.
- (7) Nothing in this section shall be read as affecting any enactment or rule of law under which permission is required for service out of the jurisdiction. 40

792 Service addresses

- (1) In the Companies Acts a "service address", in relation to a person, means an address at which documents may be effectively served on that person.

- (2) The Secretary of State may by regulations specify conditions with which a service address must comply.
- (3) Regulations under this section are subject to negative resolution procedure.

793 Requirement to give service address

Any obligation under the Companies Acts to give a person’s address is, unless otherwise expressly provided, to give a service address for that person. 5

Sending or supplying documents or information

794 The company communications provisions

- (1) The provisions of sections 795 to 800 (“the company communications provisions”) have effect for the purposes of any provision of the Companies Acts that authorises or requires documents or information to be sent or supplied by or to a company. 10
- (2) As regards documents or information to be sent or supplied to the registrar the company communications provisions have effect subject to the provisions of Part 29. 15

795 Sending or supplying documents or information

- (1) Documents or information to be sent or supplied to a company must be sent or supplied in accordance with the provisions of Schedule 5.
- (2) Documents or information to be sent or supplied by a company must be sent or supplied – 20
 - (a) in the case of a company other than a traded company, in accordance with the provisions of Schedule 6;
 - (b) in the case of a traded company, in accordance with the provisions of Schedule 7.
- (3) The provisions referred to in subsection (2) apply (and those referred to in subsection (1) do not apply) in relation to documents or information that are to be sent or supplied by one company to another. 25

796 Construction of provisions about documents or information sent or supplied

- (1) A provision that requires a document or information to be sent or supplied in hard copy form, and does not authorise its being sent or supplied in electronic form, is not complied with by sending or supplying it by electronic means. 30
- (2) A provision that authorises documents or information to be sent or supplied in hard copy form, in electronic form or by means of a website only authorises them to be sent or supplied in accordance with the company communications provisions (unless it expressly states otherwise). 35
- (3) A requirement to send or supply documents or information in hard copy form, in electronic form or by means of a website is a requirement to send or supply them in accordance with the company communications provisions (unless it expressly states otherwise).

797 Right to hard copy version

- (1) Where a member of a company or a holder of a company's debentures has received a document or information from the company otherwise than in hard copy form, he is entitled to require the company to send him a version of the document or information in hard copy form. 5
- (2) The company must send the document or information in hard copy form within 21 days of receipt of the request from the member or debenture holder.
- (3) The company may not make a charge for providing the document or information in that form.
- (4) If a company fails to comply with this section, an offence is committed by the company and every officer of it who is in default. 10
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 15
- (6) This section has effect subject to any contrary provision in an enactment.

798 Requirement of authentication

- (1) This section applies in relation to the authentication of a document or information sent or supplied by a person to a company.
- (2) A document or information sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it. 20
- (3) A document or information sent or supplied in electronic form is sufficiently authenticated –
 - (a) if the identity of the sender is confirmed in a manner specified by the company, or 25
 - (b) where no such manner has been specified by the company, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement.
- (4) Where a document or information is sent or supplied by one person on behalf of another, nothing in this section affects any provision of the company's articles under which the company may require reasonable evidence of the authority of the former to act on behalf of the latter. 30

799 Deemed delivery of documents and information

- (1) This section applies in relation to documents and information sent or supplied by a company. 35
- (2) Where –
 - (a) the document or information is sent by post (whether in hard copy or electronic form) to an address in the United Kingdom, and
 - (b) the company is able to show that it was properly addressed, prepaid and posted, 40it is deemed to have been received by the intended recipient 48 hours after it was posted.

- (3) Where—
- (a) the document or information is sent or supplied by electronic means, and
 - (b) the company is able to show that it was properly addressed, it is deemed to have been received by the intended recipient 48 hours after it was sent. 5
- (4) Where the document or information is sent or supplied by means of a website, it is deemed to have been received by the intended recipient—
- (a) when the material was first made available on the website, or
 - (b) if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website. 10
- (5) In calculating a period of hours for the purposes of this section, no account shall be taken of any part of a day that is not a working day.
- (6) This section has effect subject to—
- (a) any contrary provision of the Companies Acts; 15
 - (b) in its application to documents or information sent or supplied by a company to its members, any contrary provision of the company’s articles;
 - (c) in its application to documents or information sent or supplied by a company to its debentures holders, any contrary provision in the instrument constituting the debentures; 20
 - (d) in its application to documents or information sent or supplied by a company to a person otherwise than in his capacity as a member or debenture holder, any contrary provision in an agreement between the company and that person. 25

800 Interpretation of company communications provisions

- (1) In the company communications provisions—
- “address” includes a number or address used for the purposes of sending or receiving documents or information by electronic means;
 - “document” includes summons, notice, order or other legal process and registers; 30
 - “traded company” means a company whose securities are admitted to trading on a regulated market.
- (2) References in the company communications provisions to provisions of the Companies Acts authorising or requiring a document or information to be sent or supplied include all such provisions, whatever expression is used, and references to documents or information being sent or supplied shall be construed accordingly. 35
- (3) References in the company communications provisions to documents or information being sent or supplied by or to a company include references to documents or information being sent or supplied by or to the directors of a company acting on behalf of the company. 40

Notice of appointment of certain officers

801 Duty to notify registrar of certain appointments etc

- (1) Notice must be given to the registrar of the appointment in relation to a company of –
 - (a) a judicial factor (in Scotland), 5
 - (b) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or
 - (c) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
- (2) The notice must be given – 10
 - (a) in the case of appointment of a judicial factor, by the judicial factor;
 - (b) in the case of appointment of a receiver and manager under section 18 of the Charities Act 1993, by the Charity Commission;
 - (c) in the case of appointment of a manager under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, by the Regulator of Community Interest Companies. 15
- (3) The notice must specify an address at which service of documents (including legal process) may be effected on the person appointed.
Notice of a change in the address for service may be given to the registrar by the person appointed. 20
- (4) Where notice has been given under this section of the appointment of a person, notice must also be given to the registrar of the termination of the appointment. This notice must be given by the person specified in subsection (2).

802 Offence of failure to give notice

- (1) If a judicial factor fails to give notice of his appointment in accordance with section 801 within the period of 14 days after the appointment he commits an offence. 25
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 30

Courts and legal proceedings

803 Meaning of “the court”

- (1) Except as otherwise provided, in the Companies Acts “the court” means –
 - (a) in England and Wales, the High Court or (subject to subsection (3)) a county court; 35
 - (b) in Scotland, the Court of Session or the sheriff court;
 - (c) in Northern Ireland, the High Court.
- (2) The provisions of the Companies Acts conferring jurisdiction on “the court” as defined above have effect subject to any enactment or rule of law relating to the allocation of jurisdiction or distribution of business between courts in any part of the United Kingdom. 40

- (3) The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order –
- (a) exclude a county court from having jurisdiction under the Companies Acts, and
 - (b) for the purposes of that jurisdiction attach that court’s district, or any part of it, to another county court. 5
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise his functions under subsection (3).

804 Power of court to grant relief in certain cases 10

- (1) If in proceedings for negligence, default, breach of duty or breach of trust against –
- (a) an officer of a company, or
 - (b) a person employed by a company as auditor (whether he is or is not an officer of the company), 15
- it appears to the court hearing the case that the officer or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit. 20
- (2) If any such officer or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust –
- (a) he may apply to the court for relief, and
 - (b) the court has the same power to relieve him as it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought. 25
- (3) Where the directors of a company take advantage of the exemption conferred by section 466 (small charities: independent examiner’s report in lieu of audit) this section, as it has effect in England and Wales and Northern Ireland, applies in relation to a person appointed as independent examiner as it applies in relation to a person appointed to act as auditor. 30
- (4) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant (in Scotland, the defender) ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case from the jury and forthwith direct judgment to be entered for the defendant (in Scotland, grant decree of absolvitor) on such terms as to costs (in Scotland, expenses) or otherwise as the judge may think proper. 35
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Company Law Reform Bill [HL]

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B I L L

To reform company law and restate the greater part of the enactments relating to companies; to make other provision relating to companies and other forms of business organisation; to make provision about business names, auditors and actuaries; to amend Part 9 of the Enterprise Act 2002; and for connected purposes.

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