

# Company Law Reform Bill [HL] (Volume III)

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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.

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**PART 32**

COMPANIES: INTERPRETATION

*Meaning of "undertaking" and related expressions*

**805 Meaning of “undertaking” and related expressions**

- (1) In the Companies Acts “undertaking” means – 5
- (a) a body corporate or partnership, or
  - (b) an unincorporated association carrying on a trade or business, with or without a view to profit.
- (2) In the Companies Acts references to shares – 10
- (a) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and
  - (b) in relation to an undertaking without capital, are to interests –
    - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up. 15
- (3) Other expressions appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description. 20
- This is subject to provision in any specific context providing for the translation of such expressions.
- (4) References in the Companies Acts to “fellow subsidiary undertakings” are to undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other. 25
- (5) In the Companies Acts “group undertaking”, in relation to an undertaking, means an undertaking which is – 30
- (a) a parent undertaking or subsidiary undertaking of that undertaking, or
  - (b) a subsidiary undertaking of any parent undertaking of that undertaking.

**806 Parent and subsidiary undertakings**

- (1) This section (together with Schedule 8) defines “parent undertaking” and “subsidiary undertaking” for the purposes of the Companies Acts.
- (2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if – 35
- (a) it holds a majority of the voting rights in the undertaking, or
  - (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or
  - (c) it has the right to exercise a dominant influence over the undertaking – 40
    - (i) by virtue of provisions contained in the undertaking’s articles, or
    - (ii) by virtue of a control contract, or

- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.
- (3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking – 5
- (a) if any of its subsidiary undertakings is a member of that undertaking, or
- (b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.
- (4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if – 10
- (a) it has the power to exercise, or actually exercises, dominant influence or control over it, or
- (b) it and the subsidiary undertaking are managed on a unified basis.
- (5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly. 15
- (6) Schedule 8 contains provisions explaining expressions used in this section and otherwise supplementing this section. 20
- (7) In this section and that Schedule references to shares, in relation to an undertaking, are to allotted shares.

*Other definitions*

**807 Hard copy and electronic form and related expressions**

- (1) The following provisions apply for the purposes of the Companies Acts. 25
- (2) A document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read.  
References to hard copy have a corresponding meaning.
- (3) A document or information is sent or supplied in electronic form if it is sent or supplied – 30
- (a) by electronic means (for example, by e-mail or fax), or
- (b) by any other means while in an electronic form (for example, sending a disk by post).  
References to electronic copy have a corresponding meaning.
- (4) A document or information is sent or supplied by electronic means if it is – 35
- (a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data, and
- (b) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means. 40  
References to electronic means have a corresponding meaning.
- (5) A document or information authorised or required to be sent or supplied in electronic form must be sent or supplied in a form, and by a means, that the sender or supplier reasonably considers will enable the recipient –

- (a) to read it, and
  - (b) to retain a copy of it.
- (6) For the purposes of this section, a document or information can be read only if –
- (a) it can be read with the naked eye, or 5
  - (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.
- (7) The provisions of this section apply whether the provision of the Companies Acts in question uses the words “sent” or “supplied” or uses other words (such as “deliver”, “provide”, “produce” or, in the case of a notice, “give”) to refer to the sending or supplying of a document or information. 10

### 808 Classes of shares

- (1) For the purpose of the Companies Acts shares are of one class if the rights attached to them are in all respects uniform.
- (2) For this purpose the rights attached to shares are not regarded as different from those attached to other shares by reason only that they do not carry the same rights to dividends in the twelve months immediately following their allotment. 15

### 809 Dormant companies

- (1) For the purposes of the Companies Acts a company is “dormant” during any period in which it has no significant accounting transaction. 20
- (2) A “significant accounting transaction” means a transaction that is required by section 368 to be entered in the company’s accounting records.
- (3) In determining whether or when a company is dormant, there shall be disregarded – 25
- (a) any transaction arising from the taking of shares in the company by a subscriber to the memorandum as a result of an undertaking of his in connection with the formation of the company;
  - (b) any transaction consisting of the payment of – 30
    - (i) a fee to the registrar on a change of the company’s name,
    - (ii) a fee to the registrar on the re-registration of the company,
    - (iii) a penalty under section 437 (penalty for failure to file accounts), or
    - (iv) a fee to the registrar for the registration of an annual return.
- (4) Any reference in the Companies Acts to a body corporate other than a company being dormant has a corresponding meaning. 35

### 810 Meaning of “EEA State” and related expressions

In the Companies Acts –

“EEA State” means a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time); 40

“EEA company” and “EEA undertaking” mean a company or undertaking governed by the law of an EEA State.

**811 The former Companies Acts**

In the Companies Acts –

“the former Companies Acts” means –

- (a) the Joint Stock Companies Acts, the Companies Act 1862 (c. 89), the Companies (Consolidation) Act 1908 (c. 69), the Companies Act 1929 (c. 23), the Companies Act (Northern Ireland) 1932 (c. 7 (N.I.)), the Companies Acts 1948 to 1983, the Companies Act (Northern Ireland) 1960 (c. 22 (N.I.)), the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) and the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9)), and 5
- (b) the provisions of the Companies Act 1985 (c. 6) and the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) that are no longer in force; 10

“the Joint Stock Companies Acts” means the Joint Stock Companies Act 1856 (c. 47), the Joint Stock Companies Acts 1856, 1857 (20 & 21 Vict. c. 14), the Joint Stock Banking Companies Act 1857 (c. 49), and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability (1858 c. 91), but does not include the Joint Stock Companies Act 1844 (c. 110). 15  
20

*General***812 References to requirements of this Act**

References in the company law provisions of this Act to the requirements of this Act include the requirements of regulations and orders made under it.

**813 Minor definitions: general** 25

(1) In the Companies Acts –

“body corporate” and “corporation” include a body incorporated outside the United Kingdom, but do not include –

- (a) a corporation sole, or
- (b) a partnership that is not regarded as a legal person under the law by which it is governed; 30

“credit institution” means a credit institution as defined in article 1(1)(a) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, that is to say an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; 35

“financial institution” means a financial institution within the meaning of Article 1(1) of the Council Directive on the obligations of branches established in a Member State of credit and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (the Bank Branches Directive, 89/117/EEC); 40

“firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association; 45

“the Gazette” means –

- (a) as respects companies registered in England and Wales, the London Gazette,
  - (b) as respects companies registered in Scotland, the Edinburgh Gazette, and
  - (c) as respects companies registered in Northern Ireland, the Belfast Gazette; 5
- “parent company” means a company that is a parent undertaking (see section 806 and Schedule 8);
- “regulated market” has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)); 10
- “working day”, in relation to a company, means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in the part of the United Kingdom where the company is registered. 15
- (2) Until such date as may be appointed by order under section 925(2) for the definition in subsection (1) of “regulated market” to come into force, the following definition has effect for the purposes of the Companies Acts –
- “regulated market” has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field. 20

#### 814 Index of defined expressions

- (1) Schedule 9 contains an index of provisions defining or otherwise explaining expressions used in the Companies Acts.
- (2) For section 744A of the Companies Act 1985 (c. 6) substitute –
- “744A Index of defined expressions”** 25
- For an index which includes entries for provisions defining or otherwise explaining expressions used in this Act, see Schedule 9 to the Company Law Reform Act 2006.”.
- (3) At the end of section 63(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (interpretation) insert – 30
- “For an index which includes entries for provisions defining or otherwise explaining expressions used in that Act, see Schedule 9 to the Company Law Reform Act 2006.”.

### PART 33

#### COMPANIES: MINOR AMENDMENTS 35

#### 815 Power of Secretary of State to bring civil proceedings on company’s behalf

- (1) Section 438 of the Companies Act 1985 (power of Secretary of State to bring civil proceedings on company’s behalf) shall cease to have effect.
- (2) In section 439 of that Act (expenses of investigating company’s affairs) –
- (a) in subsection (2) omit “, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438”; 40
  - (b) omit subsections (3) and (7) (which relate to section 438);
  - (c) in subsection (8) –



- (i) for “subsections (2) and (3)” substitute “subsection (2)”, and  
(ii) omit “; and any such liability imposed by subsection (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subsection (3)”.
- (3) In section 453(1A) of that Act (investigation of overseas companies: provisions not applicable), omit paragraph (b) (which relates to section 438). 5
- (4) Nothing in this section affects proceedings brought under section 438 before the commencement of this section.
- 816 Repeal of certain provisions about company directors**
- The following provisions of Part 10 of the Companies Act 1985 shall cease to have effect – 10
- section 311 (prohibition on tax-free payments to directors);  
sections 323 and 327 (prohibition on directors dealing in share options);  
sections 324 to 326 and 328 to 329, and Parts 2 to 4 of Schedule 13 (register of directors’ interests); 15  
sections 343 and 344 (special procedure for disclosure by banks).
- 817 Repeal of requirement that certain companies publish periodical statement**
- The following provisions shall cease to have effect –
- section 720 of the Companies Act 1985 (c. 6) (certain companies to publish periodical statement), and 20  
Schedule 23 to that Act (form of statement under section 720).
- 818 Repeal of requirement that Secretary of State prepare annual report**
- Section 729 of the Companies Act 1985 (annual report to Parliament by Secretary of State on matters within the Companies Acts) shall cease to have effect. 25
- 819 Repeal of certain provisions about company charges**
- Part 4 of the Companies Act 1989 (c. 40) (registration of company charges), which has not been brought into force, is repealed.
- 820 Access to constitutional documents of RTE and RTM companies**
- (1) The Secretary of State may by order – 30
- (a) amend Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) for the purpose of facilitating access to the provisions of the articles or any other constitutional document of RTE companies;
- (b) amend Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (c. 15) (leasehold reform) for the purpose of facilitating access to the provisions of the articles or any other constitutional document of RTM companies. 35
- (2) References in subsection (1) to provisions of a company’s articles or any other constitutional document include any provisions included in those documents by virtue of any enactment. 40

- (3) An order under this section is subject to negative resolution procedure.
- (4) In this section—
- “RTE companies” has the same meaning as in Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28);
  - “RTM companies” has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (c. 15).

## PART 34

### BUSINESS NAMES

#### CHAPTER 1

#### RESTRICTED OR PROHIBITED NAMES 10

##### *Introductory*

#### **821 Application of this Chapter**

- (1) This Chapter applies to any person carrying on business in the United Kingdom.
- (2) The provisions of this Chapter do not prevent— 15
- (a) an individual carrying on business under a name consisting of his surname without any addition other than a permitted addition, or
  - (b) individuals carrying on business in partnership under a name consisting of the surnames of all the partners without any addition other than a permitted addition. 20
- (3) The following are the permitted additions—
- (a) in the case of an individual, his forename or initial;
  - (b) in the case of a partnership— 25
    - (i) the forenames of individual partners or the initials of those forenames, or
    - (ii) where two or more individual partners have the same surname, the addition of “s” at the end of that surname;
  - (c) in either case, an addition merely indicating that the business is carried on in succession to a former owner of the business.

##### *Sensitive words or expressions* 30

#### **822 Name suggesting connection with government or public authority**

- (1) A person must not, without the approval of the Secretary of State, carry on business in the United Kingdom under a name that would be likely to give the impression that the business is connected with— 35
- (a) Her Majesty’s Government, any part of the Scottish administration or Her Majesty’s Government in Northern Ireland,
  - (b) any local authority, or
  - (c) any public authority specified for the purposes of this section by regulations made by the Secretary of State.

- 
- (2) For the purposes of this section –  
 “local authority” means –
- (a) a local authority within the meaning of the Local Government Act 1972 (c. 70), the Common Council of the City of London or the Council of the Isles of Scilly, 5
  - (b) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), or
  - (c) a district council in Northern Ireland;
- “public authority” includes any person or body having functions of a public nature. 10
- (3) Regulations under this section are subject to affirmative resolution procedure.
- (4) A person who contravenes this section commits an offence.
- (5) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body 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. 15
- 823 Other sensitive words or expressions**
- (1) A person must not, without the approval of the Secretary of State, carry on business in the United Kingdom under a name that includes a word or expression for the time being specified in regulations made by the Secretary of State under this section. 20
- (2) Regulations under this section are subject to approval after being made.
- (3) A person who contravenes this section commits an offence. 25
- (4) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body 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. 30
- 824 Requirement to seek comments of government department or other relevant body**
- (1) The Secretary of State may by regulations under –
- (a) section 822 (name suggesting connection with government or public authority), or
  - (b) section 823 (other sensitive words or expressions),
- require that, in connection with an application for the approval of the Secretary of State under that section, the applicant must seek the view of a specified Government department or other body. 40
- (2) Where such a requirement applies, the applicant must request the specified department or other body (in writing) to indicate whether (and if so why) it has any objections to the proposed name.

- (3) He must submit to the Secretary of State a statement that such a request has been made and a copy of any response received from the specified body.
- (4) If these requirements are not complied with, the Secretary of State may refuse to consider the application for approval.

**825 Withdrawal of Secretary of State’s approval** 5

- (1) This section applies to approval given for the purposes of –  
section 822 (name suggesting connection with government or public authority), or  
section 823 (other sensitive words or expressions).
- (2) If it appears to the Secretary of State that there are overriding considerations of public policy that require such approval to be withdrawn, the approval may be withdrawn by notice to the person concerned. 10
- (3) The notice must state the date as from which approval is withdrawn.

*Misleading names*

**826 Name containing inappropriate indication of company type or legal form** 15

- (1) The Secretary of State may make provision by regulations prohibiting a person from carrying on business in the United Kingdom under a name consisting of or containing specified words, expressions or other indications –
  - (a) that are associated with a particular type of company or form of organisation, or 20
  - (b) that are similar to words, expressions or other indications associated with a particular type of company or form of organisation.
- (2) The regulations may prohibit the use of words, expressions or other indications –
  - (a) in a specified part, or otherwise than in a specified part, of a name; 25
  - (b) in conjunction with, or otherwise than in conjunction with, such other words, expressions or indications as may be specified.
- (3) In this section “specified” means specified in the regulations.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) A person who uses a name in contravention of regulations under this section commits an offence. 30
- (6) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (7) 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. 35

**827 Name giving misleading indication of activities**

- (1) A person must not carry on business in the United Kingdom under a name that gives so misleading an indication of the nature of the activities of the business as to be likely to cause harm to the public.
- (2) A person who uses a name in contravention of this section commits an offence. 5
- (3) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body 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

*Supplementary***828 Savings for existing lawful business names**

- (1) This section has effect in relation to—  
 sections 821 to 825 (sensitive words or expressions), and 15  
 section 826 (inappropriate indication of company type or legal form).
- (2) Those sections do not apply to the carrying on of a business by a person who—  
 (a) carried on the business immediately before the date on which this Chapter came into force, and  
 (b) continues to carry it on under the name that immediately before that date was its lawful business name. 20
- (3) Where—  
 (a) a business is transferred to a person on or after the date on which this Chapter came into force, and  
 (b) that person carries on the business under the name that was its lawful business name immediately before the transfer, 25  
 those sections do not apply in relation to the carrying on of the business under that name during the period of twelve months beginning with the date of the transfer.
- (4) In this section “lawful business name”, in relation to a business, means a name under which the business was carried on without contravening— 30  
 (a) section 2(1) of the Business Names Act 1985 (c. 7) or Article 4(1) of the Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 N.I. 7), or  
 (b) after this Chapter has come into force, the provisions of this Chapter. 35

## CHAPTER 2

### DISCLOSURE REQUIRED IN CASE OF INDIVIDUAL OR PARTNERSHIP

#### *Introductory*

#### **829 Application of this Chapter**

- (1) This Chapter applies to an individual or partnership carrying on business in the United Kingdom under a business name. 5
- (2) For the purposes of this Chapter a “business name” means a name other than—
- (a) in the case of an individual, his surname without any addition other than a permitted addition;
  - (b) in the case of a partnership— 10
    - (i) the surnames of all partners who are individuals, and
    - (ii) the corporate names of all partners who are bodies corporate, without any addition other than a permitted addition.
- (3) The following are the permitted additions—
- (a) in the case of an individual, his forename or initial; 15
  - (b) in the case of a partnership—
    - (i) the forenames of individual partners or the initials of those forenames, or
    - (ii) where two or more individual partners have the same surname, the addition of “s” at the end of that surname; 20
  - (c) in either case, an addition merely indicating that the business is carried on in succession to a former owner of the business.

#### **830 Information required to be disclosed**

The “information required by this Chapter” is—

- (a) in the case of an individual, his name; 25
  - (b) in the case of a partnership, the name of each member of the partnership;
- and in relation to each person so named, an address in the United Kingdom at which service of any document relating in any way to the business will be effective. 30

#### *Disclosure requirements*

#### **831 Disclosure required: business documents etc**

- (1) A person carrying on business in the United Kingdom under a business name must state the information required by this Chapter, in legible characters, on all— 35
- (a) business letters,
  - (b) written orders for goods or services to be supplied to the business,
  - (c) invoices and receipts issued in the course of the business, and
  - (d) written demands for payment of debts arising in the course of the business. 40

This subsection has effect subject to section 832 (exemption for large partnerships if certain conditions met).

- (2) A person carrying on business in the United Kingdom under a business name must secure that the information required by this Chapter is immediately given, by written notice, to any person with whom anything is done or discussed in the course of the business and who asks for that information. 5
- (3) The Secretary of State may by regulations require that such notices be given in a specified form.
- (4) Regulations under this section are subject to negative resolution procedure.

### **832 Exemption for large partnerships if certain conditions met** 10

- (1) Section 831(1) (disclosure required in business documents) does not apply in relation to a document issued by a partnership of more than 20 persons if the following conditions are met.
- (2) The conditions are that—
  - (a) the partnership maintains at its principal place of business a list of the names of all the partners, 15
  - (b) no partner's name appears in the document, except in the text or as a signatory, and
  - (c) the document states in legible characters the address of the partnership's principal place of business and that the list of the partners' names is open to inspection there. 20
- (3) Where a partnership maintains a list of the partners' names for the purposes of this section, any person may inspect the list during office hours.
- (4) Where an inspection required by a person in accordance with this section is refused, an offence is committed by any member of the partnership concerned who without reasonable excuse refused the inspection or permitted it to be refused. 25
- (5) A person guilty of an offence under subsection (4) 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. 30

### **833 Disclosure required: business premises**

- (1) A person carrying on business in the United Kingdom under a business name must, in any premises—
  - (a) where the business is carried on, and 35
  - (b) to which customers of the business or suppliers of goods or services to the business have access,
 display in a prominent position, so that it may easily be read by such customers or suppliers, a notice containing the information required by this Chapter.
- (2) The Secretary of State may by regulations require that such notices be displayed in a specified form. 40
- (3) Regulations under this section are subject to negative resolution procedure.

*Consequences of failure to make required disclosure*

**834 Criminal consequences of failure to make required disclosure**

- (1) A person who without reasonable excuse fails to comply with the requirements of—
  - section 831 (disclosure required: business documents etc), or 5
  - section 833 (disclosure required: business premises),commits an offence.
- (2) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body 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. 10
- (4) References in this section to the requirements of section 831 or 833 include the requirements of regulations under that section. 15

**835 Civil consequences of failure to make required disclosure**

- (1) This section applies to any legal proceedings brought by a person to whom this Chapter applies to enforce a right arising out of a contract made in the course of a business in respect of which he was, at the time the contract was made, in breach of section 831(1) or (2) (disclosure in business documents etc) or section 833(1) (disclosure at business premises). 20
- (2) The proceedings shall be dismissed if the defendant (in Scotland, the defender) to the proceedings shows—
  - (a) that he has a claim against the claimant (pursuer) arising out of the contract that he has been unable to pursue by reason of the latter's breach of the requirements of this Chapter, or 25
  - (b) that he has suffered some financial loss in connection with the contract by reason of the claimant's (pursuer's) breach of those requirements, unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue. 30
- (3) References in this section to the requirements of this Chapter include the requirements of regulations under this Chapter.
- (4) This section does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

**CHAPTER 3** 35

SUPPLEMENTARY

**836 Application of general provisions about offences**

The provisions of sections 778 to 784 (general provisions about offences) apply in relation to offences under this Part as in relation to offences under the Companies Acts. 40



**837 Interpretation**

In this Part –

- “business” includes a profession;
- “initial” includes any recognised abbreviation of a name;
- “partnership” means – 5
  - (a) a partnership within the Partnership Act 1890 (c. 39), or
  - (b) a limited partnership registered under the Limited Partnerships Act 1907 (c. 24),
- or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom; 10
- “surname”, in relation to a peer or person usually known by a British title different from his surname, means the title by which he is known.

**PART 35**

## STATUTORY AUDITORS

**CHAPTER 1** 15

## INTRODUCTORY

**838 Main purposes of Part**

The main purposes of this Part are –

- (a) to secure that only persons who are properly supervised and appropriately qualified are appointed as statutory auditors, and 20
- (b) to secure that audits by persons so appointed are carried out properly, with integrity and with a proper degree of independence.

**839 Meaning of “statutory auditor” etc**

- (1) In this Part “statutory auditor” means – 25
  - (a) a person appointed as auditor under Part 16 of this Act,
  - (b) a person appointed as auditor under section 77 of or Schedule 11 to the Building Societies Act 1986 (c. 53),
  - (c) a person appointed as auditor of an insurer that is a friendly society under section 72 of or Schedule 14 to the Friendly Societies Act 1992 (c. 40), 30
  - (d) a person appointed as auditor of an insurer that is an industrial and provident society under section 4 of the Friendly and Industrial and Provident Societies Act 1968 (c. 55) or under section 38 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)),
  - (e) a person appointed as auditor for the purposes of regulation 3 of the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219) or appointed to report on the “aggregate accounts” within the meaning of those Regulations, 35
  - (f) a person appointed as auditor of an insurer for the purposes of regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993 (S.I. 1993/3245), 40

- (g) a person appointed as auditor of a bank for the purposes of regulation 4 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 1991 (S.I. 1991/2704), and
- (h) a person appointed as auditor of a prescribed person under a prescribed enactment authorising or requiring the appointment; 5  
and the expressions “statutory audit” and “statutory audit work” are to be construed accordingly.
- (2) In this Part “audited person” means the person in respect of whom a statutory audit is conducted.
- (3) In subsection (1) – 10  
“bank” means a person who –  
(a) is a credit institution within the meaning given by Article 1.1 of Directive 2000/12/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions, and 15  
(b) is a company or a firm as defined in Article 48 of the Treaty establishing the European Community;  
“friendly society” means a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40);  
“industrial and provident society” means – 20  
(a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a society deemed by virtue of section 4 of that Act to be so registered, or  
(b) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 or a society deemed by virtue of section 4 of that Act to be so registered; 25  
“insurer” means a person who is an insurance undertaking within the meaning given by Article 2.1 of Council Directive 1991/674/EEC on the annual accounts and consolidated accounts of insurance undertakings; 30  
“prescribed” means prescribed, or of a description prescribed, by order made by the Secretary of State for the purposes of subsection (1)(h).
- (4) An order under this section is subject to negative resolution procedure.

#### 840 Eligibility for appointment as a statutory auditor: overview

- A person is eligible for appointment as a statutory auditor only if the person is so eligible – 35  
(a) by virtue of Chapter 2 (individuals and firms), or  
(b) by virtue of Chapter 3 (Comptroller and Auditor General, etc).

## CHAPTER 2

### INDIVIDUALS AND FIRMS

#### *Eligibility for appointment*

#### **841 Individuals and firms: eligibility for appointment as a statutory auditor**

- |   |    |
|---|----|
| (1) An individual or firm is eligible for appointment as a statutory auditor if the individual or firm—   | 5  |
| (a) is a member of a recognised supervisory body, and   |    |
| (b) is eligible for appointment under the rules of that body.   |    |
| (2) In the cases to which section 851 applies (individuals retaining only 1967 Act authorisation) a person’s eligibility for appointment as a statutory auditor is restricted as mentioned in that section. | 10 |

#### **842 Effect of ineligibility**

- |  |    |
|--|----|
| (1) No person may act as statutory auditor of an audited person if he is ineligible for appointment as a statutory auditor.                      |    |
| (2) If at any time during his term of office a statutory auditor becomes ineligible for appointment as a statutory auditor, he must immediately— | 15 |
| (a) resign his office (with immediate effect), and   |    |
| (b) give notice in writing to the audited person that he has resigned by reason of his becoming ineligible for appointment.                      |    |
| (3) A person is guilty of an offence if—   | 20 |
| (a) he acts as a statutory auditor in contravention of subsection (1), or  |    |
| (b) he fails to give the notice mentioned in paragraph (b) of subsection (2) in accordance with that subsection.                                 |    |
| (4) A person guilty of an offence under subsection (3) is liable—  | 25 |
| (a) on conviction on indictment, to a fine, and  |    |
| (b) on summary conviction, to a fine not exceeding the statutory maximum.  |    |
| (5) A person is guilty of an offence if—   | 30 |
| (a) he has been convicted of an offence under subsection (3)(a) or this subsection, and  |    |
| (b) he continues to act as a statutory auditor in contravention of subsection (1) after the conviction.  |    |
| (6) A person is guilty of an offence if—   | 35 |
| (a) he has been convicted of an offence under subsection (3)(b) or this subsection, and  |    |
| (b) he continues, after the conviction, to fail to give the notice mentioned in subsection (2)(b).   |    |
| (7) A person guilty of an offence under subsection (5) or (6) is liable—   |    |
| (a) on conviction on indictment, to a fine, and  |    |

- (b) on summary conviction, to a fine not exceeding one-tenth of the statutory maximum for each day on which the act or the failure continues.
- (8) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment as a statutory auditor. 5

*Independence requirement*

**843 Independence requirement**

- (1) A person may not act as statutory auditor of an audited person if one or more of subsections (2), (3) and (4) apply to him. 10
- (2) This subsection applies if the person is –
  - (a) an officer or employee of the audited person, or
  - (b) a partner or employee of such a person, or a partnership of which such a person is a partner.
- (3) This subsection applies if the person is – 15
  - (a) an officer or employee of an associated undertaking of the audited person, or
  - (b) a partner or employee of such a person, or a partnership of which such a person is a partner.
- (4) This subsection applies if there exists, between – 20
  - (a) the person or an associate of his, and
  - (b) the audited person or an associated undertaking of the audited person, a connection of any such description as may be specified by regulations made by the Secretary of State.
- (5) An auditor of an audited person is not to be regarded as an officer or employee of the person for the purposes of subsections (2) and (3). 25
- (6) In this section “associated undertaking”, in relation to an audited person, means –
  - (a) a parent undertaking or subsidiary undertaking of the audited person, or 30
  - (b) a subsidiary undertaking of a parent undertaking of the audited person.
- (7) Regulations under subsection (4) are subject to negative resolution procedure.

**844 Effect of lack of independence**

- (1) If at any time during his term of office a statutory auditor becomes prohibited from acting by section 843(1), he must immediately – 35
  - (a) resign his office (with immediate effect), and
  - (b) give notice in writing to the audited person that he has resigned by reason of his lack of independence.
- (2) A person is guilty of an offence if – 40
  - (a) he acts as a statutory auditor in contravention of section 843(1), or

- (b) he fails to give the notice mentioned in paragraph (b) of subsection (1) in accordance with that subsection.
- (3) A person guilty of an offence under subsection (2) is liable –
- (a) on conviction on indictment, to a fine, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum. 5
- (4) A person is guilty of an offence if –
- (a) he has been convicted of an offence under subsection (2)(a) or this subsection, and
  - (b) he continues to act as a statutory auditor in contravention of section 843(1) after the conviction. 10
- (5) A person is guilty of an offence if –
- (a) he has been convicted of an offence under subsection (2)(b) or this subsection, and
  - (b) after the conviction, he continues to fail to give the notice mentioned in subsection (1)(b). 15
- (6) A person guilty of an offence under subsection (4) or (5) is liable –
- (a) on conviction on indictment, to a fine, and
  - (b) on summary conviction, to a fine not exceeding one-tenth of the statutory maximum for each day on which the act or the failure continues. 20
- (7) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, prohibited from acting as statutory auditor of the audited person by section 843(1). 25

*Effect of appointment of a partnership*

**845 Effect of appointment of a partnership**

- (1) This section applies where a partnership constituted under the law of –
- (a) England and Wales,
  - (b) Northern Ireland, or 30
  - (c) any other country or territory in which a partnership is not a legal person,
- is by virtue of this Chapter appointed as statutory auditor of an audited person.
- (2) Unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners. 35
- (3) Where the partnership ceases, the appointment is to be treated as extending to –
- (a) any appropriate partnership which succeeds to the practice of that partnership, or
  - (b) any other appropriate person who succeeds to that practice having previously carried it on in partnership. 40
- (4) For the purposes of subsection (3) –

- (a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership, and
  - (b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership. 5
- (5) Where the partnership ceases and the appointment is not treated under subsection (3) as extending to any partnership or other person, the appointment may with the consent of the audited person be treated as extending to an appropriate partnership, or other appropriate person, who succeeds to – 10
  - (a) the business of the former partnership, or
  - (b) such part of it as is agreed by the audited person is to be treated as comprising the appointment.
- (6) For the purposes of this section, a partnership or other person is “appropriate” if it or he – 15
  - (a) is eligible for appointment as a statutory auditor by virtue of this Chapter, and
  - (b) is not prohibited by section 843(1) from acting as statutory auditor of the audited person. 20

### *Supervisory bodies*

#### **846 Supervisory bodies**

- (1) In this Part a “supervisory body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which maintains and enforces rules as to – 25
  - (a) the eligibility of persons for appointment as a statutory auditor, and
  - (b) the conduct of statutory audit work,which are binding on persons seeking appointment or acting as a statutory auditor either because they are members of that body or because they are otherwise subject to its control. 30
- (2) In this Part references to the members of a supervisory body are to the persons who, whether or not members of the body, are subject to its rules in seeking appointment or acting as a statutory auditor.
- (3) In this Part references to the rules of a supervisory body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part. 35

This includes rules relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.
- (4) Schedule 10 has effect with respect to the recognition of supervisory bodies for the purposes of this Part. 40

#### **847 Exemption from liability for damages**

- (1) No person within subsection (2) is to be liable in damages for anything done or omitted in the discharge or purported discharge of functions to which this subsection applies.

- (2) The persons within this subsection are –
- (a) any recognised supervisory body,
  - (b) any officer or employee of a recognised supervisory body, and
  - (c) any member of the governing body of a recognised supervisory body.
- (3) Subsection (1) applies to the functions of a recognised supervisory body so far as relating to, or to matters arising out of, any of the following – 5
- (a) rules, practices, powers and arrangements of the body to which the requirements of Part 2 of Schedule 10 apply;
  - (b) the obligations with which paragraph 20 of that Schedule requires the body to comply; 10
  - (c) any guidance issued by the body;
  - (d) the obligations imposed on the body by or by virtue of this Part.
- (4) The reference in subsection (3)(c) to guidance issued by a recognised supervisory body is a reference to any guidance or recommendation which is – 15
- (a) issued or made by it to all or any class of its members or persons seeking to become members, and
  - (b) relevant for the purposes of this Part,
- including any guidance or recommendation relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part. 20
- (5) 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). 25

*Professional qualifications*

**848 Appropriate qualifications**

- (1) A person holds an appropriate qualification for the purposes of this Chapter if and only if – 30
- (a) he holds a recognised professional qualification obtained in the United Kingdom,
  - (b) immediately before the commencement of this Chapter, he –
    - (i) held an appropriate qualification for the purposes of Part 2 of the Companies Act 1989 (c. 40) (eligibility for appointment as company auditor) by virtue of section 31(1)(a) or (c) of that Act, or 35
    - (ii) was treated as holding an appropriate qualification for those purposes by virtue of section 31(2), (3) or (4) of that Act,  - (c) immediately before the commencement of this Chapter, he – 40
    - (i) held an appropriate qualification for the purposes of Part III of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)) by virtue of Article 34(1)(a) or (c) of that Order, or
    - (ii) was treated as holding an appropriate qualification for those purposes by virtue of Article 34(2), (3) or (4) of that Order, 45  - (d) he is within subsection (2),

- (e) he has been authorised to practise the profession of statutory auditor pursuant to the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18) and has fulfilled any requirements imposed pursuant to regulation 6 of those Regulations, or 5
- (f) subject to any direction under section 850(5), he is regarded for the purposes of this Chapter as holding an approved overseas qualification.
- (2) A person is within this subsection if –
  - (a) before 1st January 1990, he began a course of study or practical training leading to a professional qualification in accountancy offered by a body established in the United Kingdom, 10
  - (b) he obtained that qualification on or after 1st January 1990 and before 1st January 1996, and
  - (c) the Secretary of State approves his qualification as an appropriate qualification for the purposes of this Chapter. 15
- (3) The Secretary of State may approve a qualification under subsection (2)(c) only if he is satisfied that, at the time the qualification was awarded, the body concerned had adequate arrangements to ensure that the qualification was awarded only to persons educated and trained to a standard equivalent to that required, at that time, in the case of a recognised professional qualification under Part 2 of the Companies Act 1989 (c. 40) (eligibility for appointment as company auditor). 20

#### **849 Qualifying bodies and recognised professional qualifications**

- (1) In this Part a “qualifying body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which offers a professional qualification in accountancy. 25
- (2) In this Part references to the rules of a qualifying body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part. 30  
This includes, so far as so relevant, rules relating to –
  - (a) admission to or expulsion from a course of study leading to a qualification,
  - (b) the award or deprivation of a qualification, or
  - (c) the approval of a person for the purposes of giving practical training or the withdrawal of such approval. 35
- (3) Schedule 11 has effect with respect to the recognition for the purposes of this Part of a professional qualification offered by a qualifying body.

#### **850 Approval of overseas qualifications**

- (1) The Secretary of State may declare that the following are to be regarded for the purposes of this Chapter as holding an approved overseas qualification – 40
  - (a) persons who are qualified to audit accounts under the law of a specified foreign country, or
  - (b) persons who hold a specified professional qualification in accountancy obtained in a specified foreign country. 45



- 
- (2) A declaration under subsection (1)(b) may be expressed to be subject to the satisfaction of any specified requirement or requirements.
- (3) The Secretary of State may make a declaration under subsection (1) only if he is satisfied that—
- (a) in the case of a declaration under subsection (1)(a), the fact that the persons in question are qualified to audit accounts under the law of the specified foreign country, or
  - (b) in the case of a declaration under subsection (1)(b), the specified professional qualification taken with any requirement or requirements to be specified under subsection (2),
- affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification. 5
- (4) The Secretary of State may make a declaration under subsection (1) only if he is satisfied that the treatment that the persons who are the subject of the declaration will receive as a result of it is comparable to the treatment which is, or is likely to be, afforded in the specified foreign country or a part of it to—
- (a) in the case of a declaration under subsection (1)(a), some or all persons who are eligible to be appointed as a statutory auditor, and
  - (b) in the case of a declaration under subsection (1)(b), some or all persons who hold a corresponding recognised professional qualification. 10
- (5) The Secretary of State may direct that persons holding an approved overseas qualification are not to be treated as holding an appropriate qualification for the purposes of this Chapter unless they hold such additional educational qualifications as the Secretary of State may specify for the purpose of ensuring that such persons have an adequate knowledge of the law and practice in the United Kingdom relevant to the audit of accounts. 15
- (6) The Secretary of State may give different directions in relation to different approved overseas qualifications. 20
- (7) The Secretary of State may, if he thinks fit, having regard to the considerations mentioned in subsections (3) and (4), withdraw a declaration under subsection (1) in relation to—
- (a) persons becoming qualified to audit accounts under the law of the specified foreign country after such date as he may specify, or
  - (b) persons obtaining the specified professional qualification after such date as he may specify. 25
- (8) The Secretary of State may, if he thinks fit, having regard to the considerations mentioned in subsections (3) and (4), vary or revoke a requirement specified under subsection (2) from such date as he may specify. 30
- (9) In this section “foreign country”, in relation to any time, means a country or territory that, at that time, is not a “relevant State” within the meaning of the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18) or part of such a State. 35

#### **851 Eligibility of individuals retaining only 1967 Act authorisation**

- (1) A person whose only appropriate qualification is based on his retention of an authorisation originally granted by the Board of Trade or the Secretary of State under section 13(1) of the Companies Act 1967 (c. 81) is eligible only for appointment as auditor of an unquoted company. 40

- (2) A company is “unquoted” if, at the time of the person’s appointment, neither the company, nor any parent undertaking of which it is a subsidiary undertaking, is a quoted company within the meaning of section 367(2).
- (3) References to a person eligible for appointment as a statutory auditor by virtue of this Part in enactments relating to eligibility for appointment as auditor of a person other than a company do not include a person to whom this section applies. 5

### *Information*

#### **852 Matters to be notified to the Secretary of State**

- (1) The Secretary of State may require a recognised supervisory body or a recognised qualifying body – 10
  - (a) to notify him immediately of the occurrence of such events as he may specify in writing and to give him such information in respect of those events as is so specified;
  - (b) to give him, at such times or in respect of such periods as he may specify in writing, such information as is so specified. 15
- (2) The notices and information required to be given must be such as the Secretary of State may reasonably require for the exercise of his functions under this Part.
- (3) The Secretary of State may require information given under this section to be given in a specified form or verified in a specified manner. 20
- (4) Any notice or information required to be given under this section must be given in writing unless the Secretary of State specifies or approves some other manner.

#### **853 The Secretary of State’s power to call for information**

- (1) The Secretary of State may by notice in writing require a person within subsection (2) to give him such information as he may reasonably require for the exercise of his functions under this Part. 25
- (2) The persons within this subsection are –
  - (a) any recognised supervisory body,
  - (b) any recognised qualifying body, and 30
  - (c) any person eligible for appointment as a statutory auditor by virtue of this Chapter.
- (3) The Secretary of State may require that any information which he requires under this section is to be given within such reasonable time and verified in such manner as he may specify. 35

### *Enforcement*

#### **854 Compliance orders**

- (1) If at any time it appears to the Secretary of State –
  - (a) in the case of a recognised supervisory body, that any requirement of Schedule 10 is not satisfied, 40

- (b) in the case of a recognised professional qualification, that any requirement of Schedule 11 is not satisfied, or
- (c) that a recognised supervisory body or a recognised qualifying body has failed to comply with an obligation to which it is subject under or by virtue of this Part, 5
- he may, instead of revoking the relevant recognition order, make an application to the court under this section.
- (2) If on an application under this section the court decides that the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question, it may order the body to take such steps as the court directs for securing that the requirement is satisfied or that the obligation is complied with. 10
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

### CHAPTER 3 15

#### AUDITORS GENERAL

##### *Eligibility for appointment*

#### **855 Auditors General: eligibility for appointment as a statutory auditor**

- (1) In this Part “Auditor General” means – 20
- (a) the Comptroller and Auditor General,
- (b) the Auditor General for Scotland,
- (c) the Auditor General for Wales, or
- (d) the Comptroller and Auditor General for Northern Ireland.
- (2) An Auditor General is eligible for appointment as a statutory auditor.
- (3) Subsection (2) is subject to any suspension notice having effect under section 863 (notices suspending eligibility for appointment as a statutory auditor). 25

##### *Conduct of audits*

#### **856 Individuals responsible for audit work on behalf of Auditors General**

An Auditor General must secure that each individual responsible for statutory audit work on behalf of that Auditor General is eligible for appointment as a statutory auditor by virtue of Chapter 2. 30

##### *The Independent Supervisor*

#### **857 Appointment of the Independent Supervisor**

- (1) The Secretary of State must appoint a body (“the Independent Supervisor”) to discharge the function mentioned in section 858(1) (“the supervision function”). 35
- (2) An appointment under this section must be made by order.

- (3) The order has the effect of making the body appointed under subsection (1) designated under section 5 of the Freedom of Information Act 2000 (c. 36) (further powers to designate public authorities).
- (4) A body may be appointed under this section only if it is a body corporate or an unincorporated association which appears to the Secretary of State – 5
  - (a) to be willing and able to discharge the supervision function, and
  - (b) to have arrangements in place relating to the discharge of that function which are such as to be likely to ensure that the conditions in subsection (4) are met.
- (5) The conditions are – 10
  - (a) that the supervision function will be exercised effectively, and
  - (b) where the order is to contain any requirements or other provisions specified under subsection (6), that that function will be exercised in accordance with any such requirements or provisions.
- (6) An order under this section may contain such requirements or other provisions relating to the exercise of the supervision function by the Independent Supervisor as appear to the Secretary of State to be appropriate. 15
- (7) An order under this section is subject to negative resolution procedure.

*Supervision of Auditors General*

- 858 Supervision of Auditors General by the Independent Supervisor** 20
- (1) The Independent Supervisor must supervise the performance by each Auditor General of his functions as a statutory auditor.
  - (2) The Independent Supervisor must discharge that duty by – 25
    - (a) entering into supervision arrangements with one or more bodies, and
    - (b) overseeing the effective operation of any supervision arrangements entered into by it.
  - (3) For this purpose “supervision arrangements” are arrangements entered into by the Independent Supervisor with a body, for the purposes of this section, in accordance with which the body does one or more of the following – 30
    - (a) determines standards relating to professional integrity and independence which must be applied by an Auditor General in statutory audit work; 30
    - (b) determines technical standards which must be applied by an Auditor General in statutory audit work and the manner in which those standards are to be applied in practice; 35
    - (c) monitors the performance of statutory audits carried out by an Auditor General;
    - (d) investigates any matter arising from the performance by an Auditor General of a statutory audit;
    - (e) holds disciplinary hearings in respect of an Auditor General which appear to be desirable following the conclusion of such investigations; 40
    - (f) decides whether (and, if so, what) disciplinary action should be taken against an Auditor General to whom such a hearing related.

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- (4) The Independent Supervisor may enter into supervision arrangements with a body despite any relationship that may exist between the Independent Supervisor and that body.
- (5) The Independent Supervisor must notify each Auditor General in writing of any supervision arrangements that it enters into under this section. 5
- (6) Supervision arrangements within subsection (3)(f) may, in particular, provide for the payment by an Auditor General of a fine to any person.
- (7) Any fine received by the Independent Supervisor under supervision arrangements is to be paid into the Consolidated Fund.
- 859 Duties of Auditors General in relation to supervision arrangements 10**
- (1) Each Auditor General must –
- (a) comply with any standards of the kind mentioned in subsection (3)(a) or (b) of section 858 determined under the supervision arrangements,
  - (b) take such steps as may be reasonably required of that Auditor General to enable his performance of statutory audits to be monitored by means of inspections carried out under the supervision arrangements, and 15
  - (c) comply with any decision of the kind mentioned in subsection (3)(f) of that section made under the supervision arrangements.
- (2) Each Auditor General must pay to the body or bodies with which the Independent Supervisor enters into the supervision arrangements such proportion of the costs incurred by the body or bodies for the purposes of the arrangements as the Independent Supervisor may notify to him in writing. 20
- (3) Expenditure under subsection (2) is –
- (a) in the case of expenditure of the Comptroller and Auditor General, to be regarded as expenditure of the National Audit Office for the purposes of section 4(1) of the National Audit Act 1983 (c. 44); 25
  - (b) in the case of expenditure of the Comptroller and Auditor General for Northern Ireland, to be regarded as expenditure of the Northern Ireland Audit Office for the purposes of Article 6(1) of the Audit (Northern Ireland) Order 1987 (S.I. 1987/460 (N.I. 5)). 30
- (4) In this section “the supervision arrangements” means the arrangements entered into under section 858.

*Reporting requirement*

**860 Reports by the Independent Supervisor**

- (1) The Independent Supervisor must, at least once in each calendar year, prepare a report on the discharge of its functions. 35
- (2) The Independent Supervisor must give a copy of each report prepared under subsection (1) to –
- (a) the Secretary of State;
  - (b) the First Minister in Scotland; 40
  - (c) the First Minister and the deputy First Minister in Northern Ireland;
  - (d) the Assembly First Secretary in Wales.

- (3) The Secretary of State must lay before each House of Parliament a copy of each report received by him under subsection (2)(a).
- (4) In relation to a calendar year during which an appointment of a body as the Independent Supervisor is made or revoked by an order under section 857, this section applies with such modifications as may be specified in the order. 5

### *Information*

#### **861 Matters to be notified to the Independent Supervisor**

- (1) The Independent Supervisor may require an Auditor General –
  - (a) to notify the Independent Supervisor immediately of the occurrence of such events as it may specify in writing and to give it such information in respect of those events as is so specified; 10
  - (b) to give the Independent Supervisor, at such times or in respect of such periods as it may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Independent Supervisor may reasonably require for the exercise of the functions conferred on it by or by virtue of this Part. 15
- (3) The Independent Supervisor may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Independent Supervisor specifies or approves some other manner. 20

#### **862 The Independent Supervisor’s power to call for information**

- (1) The Independent Supervisor may by notice in writing require an Auditor General to give it such information as it may reasonably require for the exercise of the functions conferred on it by or by virtue of this Part. 25
- (2) The Independent Supervisor may require that any information which it requires under this section is to be given within such reasonable time and verified in such manner as it may specify.

### *Enforcement*

#### **863 Suspension notices** 30

- (1) The Independent Supervisor may issue –
  - (a) a notice (a “suspension notice”) suspending an Auditor General’s eligibility for appointment as a statutory auditor in relation to all persons, or any specified person or persons, indefinitely or until a date specified in the notice; 35
  - (b) a notice amending or revoking a suspension notice previously issued to an Auditor General.
- (2) In determining whether it is appropriate to issue a notice under subsection (1), the Independent Supervisor must have regard to –
  - (a) the Auditor General’s performance of the obligations imposed on him by or by virtue of this Part, and 40

- 
- (b) the Auditor General’s performance of his functions as a statutory auditor.
  - (3) A notice under subsection (1) must –
    - (a) be in writing, and
    - (b) state the date on which it takes effect (which must be after the period of three months beginning with the date on which it is issued). 5
  - (4) Before issuing a notice under subsection (1), the Independent Supervisor must –
    - (a) give written notice of its intention to do so to the Auditor General, and
    - (b) publish the notice mentioned in paragraph (a) in such manner as it thinks appropriate for bringing it to the attention of any other persons who are likely to be affected. 10
  - (5) A notice under subsection (4) must –
    - (a) state the reasons for which the Independent Supervisor proposes to act, and 15
    - (b) give particulars of the rights conferred by subsection (6).
  - (6) A person within subsection (7) may, within the period of three months beginning with the date of service or publication of the notice under subsection (4) or such longer period as the Independent Supervisor may allow, make written representations to the Independent Supervisor and, if desired, oral representations to a person appointed for that purpose by the Independent Supervisor. 20
  - (7) The persons within this subsection are –
    - (a) the Auditor General, and
    - (b) any other person who appears to the Independent Supervisor to be affected. 25
  - (8) The Independent Supervisor must have regard to any representations made in accordance with subsection (6) in determining –
    - (a) whether to issue a notice under subsection (1), and
    - (b) the terms of any such notice. 30
  - (9) If in any case the Independent Supervisor considers it appropriate to do so in the public interest it may issue a notice under subsection (1), without regard to the restriction in subsection (3)(b), even if –
    - (a) no notice has been given or published under subsection (4), or
    - (b) the period of time for making representations in pursuance of such a notice has not expired. 35
  - (10) On issuing a notice under subsection (1), the Independent Supervisor must –
    - (a) give a copy of the notice to the Auditor General, and
    - (b) publish the notice in such manner as it thinks appropriate for bringing it to the attention of persons likely to be affected. 40
  - (11) In this section “specified” means specified in, or of a description specified in, the suspension notice in question.

#### **864 Effect of suspension notices**

- (1) An Auditor General must not act as a statutory auditor at any time when a suspension notice issued to him in respect of the audited person has effect. 45

- (2) If at any time during an Auditor General’s term of office as a statutory auditor a suspension notice issued to him in respect of the audited person takes effect, he must immediately –
  - (a) resign his office (with immediate effect), and
  - (b) give notice in writing to the audited person that he has resigned by reason of his becoming ineligible for appointment. 5
- (3) A suspension notice does not make an Auditor General ineligible for appointment as a statutory auditor for the purposes of section 842 (effect of ineligibility: criminal offences).

**865 Compliance orders** 10

- (1) If at any time it appears to the Independent Supervisor that an Auditor General has failed to comply with an obligation imposed on him by or by virtue of this Part, the Independent Supervisor may make an application to the court under this section.
- (2) If on an application under this section the court decides that the Auditor General has failed to comply with the obligation in question, it may order the Auditor General to take such steps as the court directs for securing that the obligation is complied with. 15
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session. 20

*Proceedings*

**866 Proceedings involving the Independent Supervisor**

- (1) If the Independent Supervisor is an unincorporated association, any relevant proceedings may be brought by or against it in the name of any body corporate whose constitution provides for the establishment of the body. 25
- (2) For this purpose “relevant proceedings” means proceedings brought in or in connection with the exercise of any function by the body as the Independent Supervisor.
- (3) Where an appointment under section 857 is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings. 30

*Grants*

**867 Grants to the Independent Supervisor**

In section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (grants to bodies concerned with accounting standards etc), after subsection (2)(k) insert – 35

- “(ka) exercising functions of the Independent Supervisor appointed under Chapter 3 of Part 35 of the Company Law Reform Act 2006;”.



## CHAPTER 4

### THE REGISTER OF AUDITORS ETC

#### 868 The register of auditors

- (1) The Secretary of State must make regulations requiring the keeping of a register of— 5
  - (a) the persons eligible for appointment as a statutory auditor, and
  - (b) third country auditors (see Chapter 5) who apply to be registered in the specified manner and in relation to whom specified requirements are met.
  
- (2) The regulations must require each person’s entry in the register to contain— 10
  - (a) his name and address,
  - (b) in the case of an individual eligible for appointment as a statutory auditor, the specified information relating to any firm on whose behalf he is responsible for statutory audit work,
  - (c) in the case of a firm eligible for appointment as a statutory auditor, the specified information relating to the individuals responsible for statutory audit work on its behalf, 15
  - (d) in the case of an individual or firm eligible for appointment as a statutory auditor by virtue of Chapter 2, the name of the relevant supervisory body, and 20
  - (e) in the case of a firm eligible for appointment as a statutory auditor by virtue of Chapter 2 or a third country auditor, the information mentioned in subsection (3),

and may require each person’s entry to contain other specified information.
  
- (3) The information referred to in subsection (2)(e) is— 25
  - (a) in relation to a body corporate, except where paragraph (b) applies, the name and address of each person who is a director of the body or holds any shares in it;
  - (b) in relation to a limited liability partnership, the name and address of each member of the partnership; 30
  - (c) in relation to a corporation sole, the name and address of the individual for the time being holding the office by the name of which he is the corporation sole;
  - (d) in relation to a partnership, the name and address of each partner.
  
- (4) The regulations may provide that different parts of the register are to be kept by different persons. 35
  
- (5) The regulations may impose such obligations as the Secretary of State thinks fit on—
  - (a) recognised supervisory bodies,
  - (b) any body designated by order under section 881 (delegation of Secretary of State’s functions), 40
  - (c) persons eligible for appointment as a statutory auditor,
  - (d) third country auditors,
  - (e) any person with whom arrangements are made by one or more recognised supervisory bodies, or by any body designated by order under section 881, with respect to the keeping of the register, or 45

- (f) the Independent Supervisor appointed under section 857.
- (6) The regulations may include –
  - (a) provision requiring that specified entries in the register be open to inspection at times and places specified or determined in accordance with the regulations; 5
  - (b) provision enabling a person to require a certified copy of specified entries in the register;
  - (c) provision authorising the charging of fees for inspection, or the provision of copies, of such reasonable amount as may be specified or determined in accordance with the regulations. 10
- (7) The Secretary of State may direct in writing that the requirements imposed by the regulations in accordance with subsections (2)(e) and (3), or such of those requirements as are specified in the direction, are not to apply, in whole or in part, in relation to a particular registered third country auditor or class of registered third country auditors. 15
- (8) The obligations imposed by regulations under this section on such persons as are mentioned in subsection (5)(b) or (e) are enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36).
- (9) In this section “specified” means specified by regulations under this section. 20
- (10) Regulations under this section are subject to negative resolution procedure.

#### **869 Information to be made available to public**

- (1) The Secretary of State may make regulations requiring a person eligible for appointment as a statutory auditor, or a member of a specified class of such persons, to keep and make available to the public specified information, including information regarding – 25
  - (a) the person’s ownership and governance,
  - (b) the person’s internal controls with respect to the quality and independence of its audit work,
  - (c) the person’s turnover, and 30
  - (d) the audited persons of whom the person has acted as statutory auditor.
- (2) Regulations under this section may –
  - (a) impose such obligations as the Secretary of State thinks fit on persons eligible for appointment as a statutory auditor;
  - (b) require the information to be made available to the public in a specified manner. 35
- (3) In this section “specified” means specified by regulations under this section.
- (4) Regulations under this section are subject to negative resolution procedure.

## CHAPTER 5

### REGISTERED THIRD COUNTRY AUDITORS

#### *Introductory*

- 870 Meaning of “third country auditor”, “registered third country auditor” etc**
- (1) In this Part – 5  
     “third country auditor” means the auditor of the accounts of a traded non-Community company, and the expressions “third country audit” and “third country audit work” are to be construed accordingly;  
     “registered third country auditor” means a third country auditor who is entered in the register kept in accordance with regulations under section 868(1). 10
- (2) In subsection (1) “traded non-Community company” means a body corporate – 15  
     (a) which is incorporated or formed under the law of a country or territory which is not a member State or part of a member State,  
     (b) whose transferable securities are admitted to trading on a regulated market situated or operating in the United Kingdom, and  
     (c) which has not been excluded, or is not of a description of bodies corporate which has been excluded, from this definition by an order made by the Secretary of State. 20
- (3) For this purpose – 25  
     “regulated market” has the meaning given by Article 4.1(14) of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments;  
     “transferable securities” has the meaning given by Article 4.1(18) of that Directive.
- (4) An order under this section is subject to negative resolution procedure.

#### *Duties*

- 871 Duties of registered third country auditors**
- (1) A registered third country auditor must participate in – 30  
     (a) arrangements within paragraph 1 of Schedule 12 (arrangements for independent monitoring of audits of traded non-Community companies), and  
     (b) arrangements within paragraph 2 of that Schedule (arrangements for independent investigation for disciplinary purposes of public interest cases). 35
- (2) A registered third country auditor must – 40  
     (a) take such steps as may be reasonably required of it to enable its performance of third country audits to be monitored by means of inspections carried out under the arrangements mentioned in subsection (1)(a), and

- (b) comply with any decision as to disciplinary action to be taken against it made under the arrangements mentioned in subsection (1)(b).
- (3) Schedule 12 makes further provision with respect to the arrangements in which registered third country auditors are required to participate.
- (4) The Secretary of State may direct in writing that subsections (1) to (3) are not to apply, in whole or in part, in relation to a particular registered third country auditor or class of registered third country auditors. 5

### *Information*

#### **872 Matters to be notified to the Secretary of State**

- (1) The Secretary of State may require a registered third country auditor – 10
  - (a) to notify him immediately of the occurrence of such events as he may specify in writing and to give him such information in respect of those events as is so specified;
  - (b) to give him, at such times or in respect of such periods as he may specify in writing, such information as is so specified. 15
- (2) The notices and information required to be given must be such as the Secretary of State may reasonably require for the exercise of his functions under this Part.
- (3) The Secretary of State may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Secretary of State specifies or approves some other manner. 20

#### **873 The Secretary of State’s power to call for information**

- (1) The Secretary of State may by notice in writing require a registered third country auditor to give him such information as he may reasonably require for the exercise of his functions under this Part. 25
- (2) The Secretary of State may require that any information which he requires under this section is to be given within such reasonable time and verified in such manner as he may specify.

### *Enforcement* 30

#### **874 Compliance orders**

- (1) If at any time it appears to the Secretary of State that a registered third country auditor has failed to comply with an obligation imposed on him by or by virtue of this Part, the Secretary of State may make an application to the court under this section. 35
- (2) If on an application under this section the court decides that the auditor has failed to comply with the obligation in question, it may order the auditor to take such steps as the court directs for securing that the obligation is complied with.

- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

### **875 Removal of third country auditors from the register of auditors**

- (1) The Secretary of State may, by regulations, confer on the person keeping the register in accordance with regulations under section 868(1) power to remove a third country auditor from the register. 5
- (2) Regulations under this section must require the person keeping the register, in determining whether to remove a third country auditor from the register, to have regard to the auditor’s compliance with obligations imposed on him by or by virtue of this Part. 10
- (3) Where provision is made under section 868(4) (different parts of the register to be kept by different persons), references in this section to the person keeping the register are to the person keeping that part of the register which relates to third country auditors.
- (4) Regulations under this section are subject to negative resolution procedure. 15

### **876 Grants to bodies concerned with arrangements under Schedule 12**

In section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (grants to bodies concerned with accounting standards etc), after subsection (2)(ka) (inserted by section 867) insert –

- “(kb) establishing, maintaining or carrying out arrangements within paragraph 1 or 2 of Schedule 12 to the Company Law Reform Act 2006;”.
- 20

## **CHAPTER 6**

### SUPPLEMENTARY AND GENERAL

*Power to require second company audit* 25

### **877 Secretary of State’s power to require second audit of a company**

- (1) This section applies where a person appointed as statutory auditor of a company was not an appropriate person for any part of the period during which the audit was conducted.
- (2) The Secretary of State may direct the company concerned to retain an appropriate person – 30
- (a) to conduct a second audit of the relevant accounts, or
- (b) to review the first audit and to report (giving his reasons) whether a second audit is needed.
- (3) For the purposes of subsections (1) and (2) a person is “appropriate” if he – 35
- (a) is eligible for appointment as a statutory auditor or, if the person is an Auditor General, for appointment as statutory auditor of the company, and

- (b) is not prohibited by section 843(1) from acting as statutory auditor of the company.
- (4) The Secretary of State must send a copy of a direction under subsection (2) to the registrar of companies.
- (5) The company is guilty of an offence if – 5
  - (a) it fails to comply with a direction under subsection (2) within the period of 21 days beginning with the date on which it is given, or
  - (b) it has been convicted of a previous offence under this subsection and the failure to comply with the direction which led to the conviction continues after the conviction. 10
- (6) The company must –
  - (a) send a copy of a report under subsection (2)(b) to the registrar of companies, and
  - (b) if the report states that a second audit is needed, take such steps as are necessary for the carrying out of that audit. 15
- (7) The company is guilty of an offence if –
  - (a) it fails to send a copy of a report under subsection (2)(b) to the registrar within the period of 21 days beginning with the date on which it receives it,
  - (b) in a case within subsection (6)(b), it fails to take the steps mentioned immediately it receives the report, or 20
  - (c) it has been convicted of a previous offence under this subsection and the failure to send a copy of the report, or take the steps, which led to the conviction continues after the conviction.
- (8) A company guilty of an offence under this section is liable on summary conviction – 25
  - (a) in a case within subsection (5)(a) or (7)(a) or (b), to a fine not exceeding level 5 on the standard scale, and
  - (b) in a case within subsection (5)(b) or (7)(c), to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues. 30
- (9) In this section “registrar of companies” has the meaning given by section 713.

### 878 Supplementary provision about second audits

- (1) If a person accepts an appointment, or continues to act, as statutory auditor of a company at a time when he knows he is not an appropriate person, the company may recover from him any costs incurred by it in complying with the requirements of section 877. 35

For this purpose “appropriate” is to be construed in accordance with subsection (3) of that section.
- (2) Where a second audit is carried out under section 877, any statutory or other provision applying in relation to the first audit applies also, in so far as practicable, in relation to the second audit. 40
- (3) A direction under section 877(2) is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36). 45

*False and misleading statements*

**879 Misleading, false and deceptive statements**

- (1) A person is guilty of an offence if –
- (a) for the purposes of or in connection with any application under this Part, or 5
  - (b) in purported compliance with any requirement imposed on him by or by virtue of this Part,  
 he knowingly or recklessly furnishes information which is misleading, false or deceptive in a material particular.
- (2) It is an offence for a person whose name does not appear on the register of auditors kept under regulations under section 868 in an entry made under subsection (1)(a) of that section to describe himself as a registered auditor or so to hold himself out as to indicate, or be reasonably understood to indicate, that he is a registered auditor. 10
- (3) It is an offence for a person whose name does not appear on the register of auditors kept under regulations under that section in an entry made under subsection (1)(b) of that section to describe himself as a registered third country auditor or so to hold himself out as to indicate, or be reasonably understood to indicate, that he is a registered third country auditor. 15
- (4) It is an offence for a body which is not a recognised supervisory body or a recognised qualifying body to describe itself as so recognised or so to describe itself or hold itself out as to indicate, or be reasonably understood to indicate, that it is so recognised. 20
- (5) 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 to a fine (or both); 25
  - (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), 30
    - (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).
- In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” in paragraph (b)(i) substitute “six months”. 35
- (6) Subject to subsection (7), a person guilty of an offence under subsection (2), (3) or (4) is liable on summary conviction –
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or both), 40
  - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale (or both).
- In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in paragraph (a) substitute “six months”. 45

- (7) Where a contravention of subsection (2), (3) or (4) involves a public display of the offending description, the maximum fine that may be imposed is an amount equal to level 5 on the standard scale multiplied by the number of days for which the display has continued.
- (8) It is a defence for a person charged with an offence under subsection (2), (3) or (4) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. 5

*Fees*

**880 Fees**

- (1) An applicant for a recognition order under this Part must pay such fee in respect of his application as the Secretary of State may by regulations prescribe; and no application is to be regarded as duly made unless this subsection is complied with. 10
- (2) The Secretary of State may by regulations prescribe periodical fees to be paid by – 15
- (a) every recognised supervisory body,
  - (b) every recognised qualifying body,
  - (c) every Auditor General, and
  - (d) every registered third country auditor.
- (3) Fees received by the Secretary of State by virtue of this Part are to be paid into the Consolidated Fund. 20
- (4) Regulations under this section are subject to negative resolution procedure.

*Delegation of Secretary of State's functions*

**881 Delegation of the Secretary of State's functions**

- (1) The Secretary of State may make an order under this section (a “delegation order”) for the purpose of enabling functions of the Secretary of State under this Part to be exercised by a body designated by the order. 25
- (2) The body designated by a delegation order may be either –
- (a) a body corporate which is established by the order, or
  - (b) subject to section 882, a body (whether a body corporate or an unincorporated association) which is already in existence (“an existing body”). 30
- (3) A delegation order has the effect of making the body designated by the order designated under section 5 of the Freedom of Information Act 2000 (c. 36) (further powers to designate public authorities). 35
- (4) A delegation order has the effect of transferring to the body designated by it all functions of the Secretary of State under this Part –
- (a) subject to such exceptions and reservations as may be specified in the order, and
  - (b) except – 40
    - (i) his functions in relation to the body itself, and



- (ii) his functions under section 857 (appointment of Independent Supervisor).
- (5) A delegation order may confer on the body designated by it such other functions supplementary or incidental to those transferred as appear to the Secretary of State to be appropriate. 5
- (6) Any transfer of functions under the following provisions must be subject to the reservation that the functions remain exercisable concurrently by the Secretary of State –
- (a) section 853 (power to call for information from recognised bodies etc);
  - (b) section 873 (power to call for information from registered third country auditors); 10
  - (c) section 883 (directions to comply with international obligations).
- (7) Any transfer of –
- (a) the function of refusing to make a declaration under section 850(1) on the grounds referred to in section 850(4) (lack of comparable treatment), or
  - (b) the function of withdrawing such a declaration under section 850(7) on those grounds,
- must be subject to the reservation that the function is exercisable only with the consent of the Secretary of State. 20
- (8) A delegation order may be amended or, if it appears to the Secretary of State that it is no longer in the public interest that the order should remain in force, revoked by a further order under this section.
- (9) Where functions are transferred or resumed, the Secretary of State may by order confer or, as the case may be, take away such other functions supplementary or incidental to those transferred or resumed as appear to him to be appropriate. 25
- (10) Where a delegation order is made, Schedule 13 has effect with respect to –
- (a) the status of the body designated by the order in exercising functions of the Secretary of State under this Part, 30
  - (b) the constitution and proceedings of the body where it is established by the order,
  - (c) the exercise by the body of certain functions transferred to it, and
  - (d) other supplementary matters.
- (11) An order under this section which has the effect of transferring or resuming any functions is subject to affirmative resolution procedure. 35
- (12) Any other order under this section is subject to negative resolution procedure.

## **882 Delegation of functions to an existing body**

- (1) The Secretary of State’s power to make a delegation order under section 881 which designates an existing body is exercisable in accordance with this section. 40
- (2) The Secretary of State may make such a delegation order if it appears to him that –
- (a) the body is able and willing to exercise the functions that would be transferred by the order, and 45

- (b) the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (3) are met.
- (3) The conditions are –
  - (a) that the functions in question will be exercised effectively, and 5
  - (b) where the delegation order is to contain any requirements or other provisions specified under subsection (4), that those functions will be exercised in accordance with any such requirements or provisions.
- (4) The delegation order may contain such requirements or other provision relating to the exercise of the functions by the designated body as appear to the Secretary of State to be appropriate. 10
- (5) An existing body –
  - (a) may be designated by a delegation order under section 881, and
  - (b) may accordingly exercise functions of the Secretary of State in pursuance of the order, 15despite any involvement of the body in the exercise of any functions under arrangements within paragraph 21, 22, 23(1) or 24(1) of Schedule 10 or paragraph 1 or 2 of Schedule 12.

*International obligations*

- 883 Directions to comply with international obligations** 20
- (1) If it appears to the Secretary of State –
    - (a) that any action proposed to be taken by a recognised supervisory body or a recognised qualifying body, or a body designated by order under section 881, would be incompatible with Community obligations or any other international obligations of the United Kingdom, or 25
    - (b) that any action which that body has power to take is required for the purpose of implementing any such obligations,he may direct the body not to take or, as the case may be, to take the action in question.
  - (2) A direction may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient. 30
  - (3) A direction under this section given to a body designated by order under section 881 is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36). 35

*General provision relating to offences*

**884 Offences by bodies corporate, partnerships and unincorporated associations**

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly. 40

- (2) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) Where an offence under this Part committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly. 5  
10

### 885 Time limits for prosecution of offences

- (1) An information relating to an offence under this Part which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within the period of twelve months beginning with the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State to justify the proceedings comes to his knowledge. 15
- (2) Proceedings in Scotland for an offence under this Part may be commenced at any time within the period of twelve months beginning with the date on which evidence sufficient in the Lord Advocate's opinion to justify proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within the period of twelve months beginning with the date on which it came to the knowledge of the Secretary of State. 20
- (3) For the purposes of subsection (2) proceedings are to be deemed to be commenced on the date on which a warrant to apprehend or cite the accused is granted, if the warrant is executed without undue delay. 25
- (4) A complaint charging an offence under this Part which is triable by a magistrates' court in Northern Ireland may be so tried if it is made at any time within the period of twelve months beginning with the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Secretary of State to justify the proceedings comes to his knowledge. 30
- (5) This section does not authorise—
- (a) in the case of proceedings in England and Wales, the trial of an information laid,
  - (b) in the case of proceedings in Scotland, the commencement of proceedings, or
  - (c) in the case of proceedings in Northern Ireland, the trial of a complaint made,
- more than three years after the commission of the offence.
- (6) 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 to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence. 40
- (7) Nothing in this section affects proceedings within the time limits prescribed by section 127(1) of the Magistrates' Courts Act 1980 (c. 43), section 331 of the Criminal Procedure (Scotland) Act 1975 or Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (the usual time limits for criminal proceedings). 45

## 886 Jurisdiction and procedure in respect of offences

- (1) Summary proceedings for an offence under this Part may, without prejudice to any jurisdiction exercisable apart from this section, be taken—
  - (a) against a body corporate or unincorporated association at any place at which it has a place of business, and 5
  - (b) against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under this Part by an unincorporated association must be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate. 10
- (3) Section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in England and Wales with an offence under this Part as they apply in the case of a corporation. 15
- (4) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Article 166 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in Northern Ireland with an offence under this Part as they apply in the case of a corporation. 20
- (5) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under this Part by an unincorporated association, section 70 of the Criminal Procedure (Scotland) Act 1995 (proceedings on indictment against bodies corporate) applies as if the association were a body corporate. 25
- (6) A fine imposed on an unincorporated association on its conviction of such an offence must be paid out of the funds of the association.

### *Notices etc*

## 887 Service of notices

- (1) This section has effect in relation to any notice, direction or other document required or authorised by or by virtue of this Part to be given to or served on any person other than the Secretary of State.
- (2) Any such document may be given to or served on the person in question—
  - (a) by delivering it to him, 35
  - (b) by leaving it at his proper address, or
  - (c) by sending it by post to him at that address.
- (3) Any such document may—
  - (a) in the case of a body corporate, be given to or served on an officer of that body; 40
  - (b) in the case of a partnership, be given to or served on any partner;
  - (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of that association.

- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person is his last known address (whether of his residence or of a place where he carries on business or is employed) and also –
- (a) in the case of a person who is eligible under the rules of a recognised supervisory body for appointment as a statutory auditor and who does not have a place of business in the United Kingdom, the address of that body; 5
  - (b) in the case of a body corporate or an officer of that body, the address of the registered or principal office of that body in the United Kingdom; 10
  - (c) in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in the United Kingdom.

### **888 Documents in electronic form**

- (1) This section applies where – 15
- (a) section 887 authorises the giving or sending of a notice, direction or other document by its delivery to a particular person (“the recipient”), and
  - (b) the notice, direction or other document is transmitted to the recipient –
    - (i) by means of an electronic communications network, or 20
    - (ii) by other means but in a form that requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Part as a delivery of the notice, direction or other document to the recipient, but only if the recipient has indicated to the person making the transmission his willingness to receive the notice, direction or other document in the form and manner used. 25
- (3) An indication to a person for the purposes of subsection (2) –
- (a) must be given to the person in such manner as he may require,
  - (b) may be a general indication or an indication that is limited to notices, directions or other documents of a particular description, 30
  - (c) must state the address to be used,
  - (d) must be accompanied by such other information as the person requires for the making of the transmission, and
  - (e) may be modified or withdrawn at any time by a notice given to the person in such manner as he may require. 35
- (4) In this section “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21).

### *Interpretation*

### **889 Meaning of “associate”**

- (1) In this Part “associate”, in relation to a person, is to be construed as follows. 40
- (2) In relation to an individual, “associate” means –
- (a) that individual’s spouse, civil partner or minor child or step-child,
  - (b) any body corporate of which that individual is a director, and
  - (c) any employee or partner of that individual.

- (3) In relation to a body corporate, “associate” means –
- (a) any body corporate of which that body is a director,
  - (b) any body corporate in the same group as that body, and
  - (c) any employee or partner of that body or of any body corporate in the same group. 5
- (4) In relation to a partnership constituted under the law of Scotland, or any other country or territory in which a partnership is a legal person, “associate” means –
- (a) any body corporate of which that partnership is a director,
  - (b) any employee of or partner in that partnership, and 10
  - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership constituted under the law of England and Wales or Northern Ireland, or the law of any other country or territory in which a partnership is not a legal person, “associate” means any person who is an associate of any of the partners. 15
- (6) In subsections (2)(b), (3)(a) and (4)(a), in the case of a body corporate which is a limited liability partnership, “director” is to be read as “member”.

## 890 Minor definitions

- (1) In this Part, unless a contrary intention appears –
- “address” means – 20
    - (a) in relation to an individual, his usual residential or business address;
    - (b) in relation to a firm, its registered or principal office in the United Kingdom;
  - “company” means any company or other body the accounts of which must be audited in accordance with Part 16; 25
  - “director”, in relation to a body corporate, includes any person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the body are accustomed to act; 30
  - “firm” means any entity, whether or not a legal person, which is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association;
  - “group”, in relation to a body corporate, means the body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company; 35
  - “holding company” and “subsidiary” are to be read in accordance with section 736 of the Companies Act 1985 (c. 6); 40
  - “officer”, in relation to a body corporate, includes a director, a manager, a secretary or, where the affairs of the body are managed by its members, a member;
  - “parent undertaking” and “subsidiary undertaking” are to be read in accordance with section 806 and Schedule 8. 45
- (2) For the purposes of this Part a body is to be regarded as “established in the United Kingdom” if and only if –

- (a) it is incorporated or formed under the law of the United Kingdom or a part of the United Kingdom, or
- (b) its central management and control are exercised in the United Kingdom;
- and any reference to a qualification “obtained in the United Kingdom” is to a qualification obtained from such a body. 5
- (3) The Secretary of State may by regulations make such modifications of this Part as appear to him to be necessary or appropriate for the purposes of its application in relation to any firm, or description of firm, which is not a body corporate or a partnership. 10
- (4) Regulations under subsection (3) are subject to negative resolution procedure.

### 891 Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)– 15

<i>Expression</i>	<i>Provision</i>	
address	section 890(1)	
appropriate qualification	section 848	
associate	section 889	
audited person	section 839(2)	20
Auditor General	section 855(1)	
company	section 890(1)	
delegation order	section 881(1)	
director (of a body corporate)	section 890(1)	
enactment	section 918	25
established in the United Kingdom	section 890(2)	
firm	section 890(1)	
group (in relation to a body corporate)	section 890(1)	
holding company	section 890(1)	
main purposes of this Part	section 838	30
member (of a supervisory body)	section 846(2)	
obtained in the United Kingdom	section 890(2)	
officer	section 890(1)	
parent undertaking	section 890(1)	

<i>Expression</i>	<i>Provision</i>	
qualifying body	section 849(1)	
recognised, in relation to a professional qualification	section 849(3) and Schedule 11	
recognised, in relation to a qualifying body	paragraph 1(2) of Schedule 11	5
recognised, in relation to a supervisory body	section 846(4) and Schedule 10	
registered third country auditor	section 870(1)	
rules of a qualifying body	section 849(2)	10
rules of a supervisory body	section 846(3)	
statutory auditor, statutory audit and statutory audit work	section 839(1)	
subsidiary	section 890(1)	
supervisory body	section 846(1)	15
subsidiary undertaking	section 890(1)	
third country auditor, third country audit and third country audit work	section 870(1)	

*Miscellaneous and general*

- 892 Power to make provision in consequence of changes affecting accountancy bodies** 20
- (1) The Secretary of State may by regulations make such amendments of enactments as appear to him to be necessary or expedient in consequence of any change of name, merger or transfer of engagements affecting –
- (a) a recognised supervisory body or recognised qualifying body, or 25
- (b) a body of accountants referred to in, or approved, authorised or otherwise recognised for the purposes of, any other enactment.
- (2) Regulations under this section are subject to negative resolution procedure.
- 893 Consequential amendments**
- Schedule 14 contains consequential amendments relating to this Part. 30



**PART 36**

## TRANSPARENCY OBLIGATIONS AND RELATED MATTERS

*Introductory***894 The transparency obligations directive**

In Part 6 of the Financial Services and Markets Act 2000 (c. 8) (which makes provision about official listing, prospectus requirements for transferable securities, etc), in section 103(1) (interpretation), at the appropriate place insert – 5

““the transparency obligations directive” means Directive 2004/109/EC of the European Parliament and of the Council relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;” 10

*Transparency obligations***895 Transparency rules**

15

After section 89 of the Financial Services and Markets Act 2000 insert –

*“Transparency obligations***89A Transparency rules**

- (1) The competent authority may make rules for the purposes of the transparency obligations directive. 20
- (2) The rules may include provision for dealing with any matters arising out of or related to any provision of the transparency obligations directive.
- (3) The rules may include provision requiring –
  - (a) the provision of voteholder information to issuers or others (see section 89B), and 25
  - (b) the provision of information by issuers to the public or to the competent authority (see section 89C).
- (4) The competent authority may also make rules –
  - (a) for the purpose of ensuring that voteholder information in respect of voting shares traded on a UK market other than a regulated market is made public or notified to the competent authority; 30
  - (b) providing for persons who hold comparable instruments (see section 89D(1)(c)) in respect of voting shares to be treated, in the circumstances specified in the rules, as holding some or all of the voting rights in respect of those shares. 35
- (5) Without prejudice to subsections (1) to (3), rules under subsection (4) may, in particular, make provision –
  - (a) specifying how the proportion of – 40

- (i) the total voting rights in respect of shares in an issuer, or
    - (ii) the total voting rights in respect of a particular class of shares in an issuer,held by a person is to be determined;
  - (b) specifying the circumstances in which, for the purposes of any determination of the voting rights held by a person (“P”) in respect of voting shares in an issuer, any voting rights held, or treated by virtue of subsection (4)(b) as held, by another person in respect of voting shares in the issuer are to be regarded as held by P; 5
  - (c) specifying the nature of the information which must be included in any notification; 10
  - (d) about the form of any notification;
  - (e) requiring any notification to be given within a specified period;
  - (f) specifying the manner in which any information is to be made public and the period within which it must be made public; 15
  - (g) specifying circumstances in which any of the requirements imposed by rules under subsection (4) does not apply.
- (6) Rules under this section are referred to in this Part as “transparency rules”. 20

#### **89B Provision of voteholder information**

- (1) Transparency rules may make provision for voteholder information in respect of voting shares to be notified, in circumstances specified in the rules –
- (a) to the issuer, or 25
  - (b) to the public,
- or to both.
- (2) In this Part “voteholder information” in respect of voting shares means information relating to the proportion of voting rights held by a person in respect of the shares. 30
- (3) Transparency rules may require notification of voteholder information relating to a person –
- (a) initially, not later than such date as may be specified in the rules for the purposes of the first indent of Article 30.2 of the transparency obligations directive, and 35
  - (b) subsequently, in accordance with the following provisions.
- (4) Transparency rules under subsection (3)(b) may require notification of voteholder information relating to a person only where there is a notifiable change in the proportion of –
- (a) the total voting rights in respect of shares in the issuer, or 40
  - (b) the total voting rights in respect of a particular class of share in the issuer,
- held by the person.
- (5) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes – 45
- (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,

- (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
  - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (6) In subsection (5) “designated” means designated by the rules. 5

### 89C Provision of information by issuers

- (1) Transparency rules may make provision requiring the issuer of voting shares, in circumstances specified in the rules –
- (a) to make public information to which this section applies, or
  - (b) to notify the competent authority of information to which this section applies, 10
- or to do both.
- (2) This section applies to the following information –
- (a) the information required by Articles 4 to 6 of the transparency obligations directive; 15
  - (b) voteholder information –
    - (i) notified to the issuer, or
    - (ii) relating to the proportion of voting rights held by the issuer in respect of voting shares in the issuer;
  - (c) information relating to the issuer’s capital; 20
  - (d) information relating to the rights attached to the shares or other securities issued by the issuer (including the total number of voting rights in respect of shares or of shares of a particular class);
  - (e) information about new loan issues and about any guarantee or security in connection with any such issue. 25
- (3) Transparency rules may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer –
- (a) initially, not later than such date as may be specified in the rules for the purposes of the second indent of Article 30.2 of the transparency obligations directive, and 30
  - (b) subsequently, in accordance with the following provisions.
- (4) Transparency rules under subsection (3)(b) may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer only where there is a notifiable change in the proportion of –
- (a) the total voting rights in respect of shares in the issuer, or
  - (b) the total voting rights in respect of a particular class of share in the issuer, 40
- held by the issuer.
- (5) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes –
- (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion, 45
  - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or

- (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.

- (6) In subsection (5) “designated” means designated by the rules.

#### **89D Transparency rules: interpretation etc**

- (1) For the purposes of sections 89A to 89E – 5
  - (a) the voting rights in respect of any voting shares are the voting rights attached to those shares,
  - (b) a person is to be regarded as holding the voting rights in respect of the shares –
    - (i) if, by virtue of those shares, he is a shareholder within the meaning of Article 2.1(e) of the transparency obligations directive; 10
    - (ii) if, and to the extent that, he is entitled to acquire, dispose of or exercise those voting rights in one or more of the cases mentioned in Article 10(a) to (h) of the transparency obligations directive; 15
    - (iii) if he holds, directly or indirectly, a financial instrument which results in an entitlement to acquire the shares and is an Article 13 instrument, and
  - (c) a person holds a “comparable instrument” in respect of voting shares if he holds, directly or indirectly, a financial instrument in relation to the shares which has similar economic effects to an Article 13 instrument (whether or not the financial instrument results in an entitlement to acquire the shares). 20
- (2) Transparency rules under section 89A(4)(b) may make different provision for different descriptions of comparable instrument. 25
- (3) For the purposes of sections 89A to 89E two or more persons may, at the same time, each be regarded as holding the same voting rights.
- (4) In those sections –
  - “Article 13 instrument” means a financial instrument of a type determined by the European Commission under Article 13(2)(a) of the transparency obligations directive; 30
  - “UK market” means a market that is situated or operating in the United Kingdom;
  - “voting shares” means shares – 35
    - (a) to which voting rights are attached, and
    - (b) which are shares of an issuer whose shares have been admitted to trading on a market (whether a regulated market or not).

#### **89E Transparency rules: other supplementary provisions** 40

- (1) Transparency rules that require a person to make information public may include provision authorising the competent authority to make the information public in the event that the person fails to do so.
- (2) The competent authority may make public any information notified to the authority in accordance with transparency rules. 45

- (3) Transparency rules may make provision by reference to any provision of any rules made by the Panel on Takeovers and Mergers under Part 24 of the Company Law Reform Act 2006.
- (4) Sections 89A to 89D and this section are without prejudice to any other power conferred by this Part to make Part 6 rules.”. 5

## 896 Competent authority’s power to call for information

In Part 6 of the Financial Services and Markets Act 2000 (c. 8) after the sections inserted by section 895 above insert –

*“Power of competent authority to call for information*

### 89F Competent authority’s power to call for information 10

- (1) The competent authority may by notice in writing given to a person to whom this section applies require him –
- (a) to provide specified information or information of a specified description, or
  - (b) to produce specified documents or documents of a specified description. 15
- (2) This section applies to –
- (a) an issuer of securities in respect of whom transparency rules have effect;
  - (b) a voteholder; 20
  - (c) an auditor of –
    - (i) an issuer to whom this section applies, or
    - (ii) a voteholder;
  - (d) a person who controls a voteholder;
  - (e) a person controlled by a voteholder; 25
  - (f) a director or other similar officer of an issuer to whom this section applies;
  - (g) a director or other similar officer of a voteholder or, where the affairs of a voteholder are managed by its members, a member of the voteholder. 30
- (3) This section applies only to information and documents reasonably required in connection with the exercise by the competent authority of functions conferred on it by or under sections 89A to 89E (transparency rules).
- (4) Information or documents required under this section must be provided or produced – 35
- (a) before the end of such reasonable period as may be specified, and
  - (b) at such place as may be specified.
- (5) If a person claims a lien on a document, its production under this section does not affect the lien. 40

### 89G Requirements in connection with call for information

- (1) The competent authority may require any information provided under that section to be provided in such form as it may reasonably require.

- (2) The competent authority may require –
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require;
  - (b) any document produced to be authenticated in such manner as it may reasonably require. 5
- (3) If a document is produced in response to a requirement imposed under this section, the competent authority may –
  - (a) take copies of or extracts from the document; or
  - (b) require the person producing the document, or any relevant person, to provide an explanation of the document. 10
- (4) In subsection (3)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who –
  - (a) has been or is a director or controller of that person;
  - (b) has been or is an auditor of that person;
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or 15
  - (d) has been or is an employee of that person.
- (5) If a person who is required under this section to produce a document fails to do so, the competent authority may require him to state, to the best of his knowledge and belief, where the document is. 20

**89H Power to call for information: supplementary provisions**

- (1) In sections 89F and 89G (power of competent authority to call for information) –
  - “control” and “controlled” have the meaning given by subsection (2) below; 25
  - “specified” means specified in the notice;
  - “voteholder” means a person who –
    - (a) holds voting rights in respect of any voting shares for the purposes of sections 89A to 89E (transparency rules), or 30
    - (b) is treated as holding such rights by virtue of rules under section 89A(4)(b).
- (2) For the purposes of those sections a person (“A”) controls another person (“B”) if –
  - (a) A holds a majority of the voting rights in B, 35
  - (b) A is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B,
  - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or 40
  - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (3) For the purposes of subsection (2)(b) –
  - (a) any rights of a person controlled by A, and 45
  - (b) any rights of a person acting on behalf of A or a person controlled by A,

are treated as held by A.”.

## 897 Powers exercisable in case of infringement of transparency obligation

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after the sections inserted by section 896 above insert –

*“Powers exercisable in case of infringement of transparency obligation* 5

### 89I Public censure of issuer

- (1) If the competent authority finds that an issuer of securities admitted to trading on a regulated market situated or operating in the United Kingdom is failing or has failed to comply with an applicable transparency obligation, it may publish a statement to that effect. 10
- (2) If the competent authority proposes to publish a statement, it must give the issuer a warning notice setting out the terms of the proposed statement.
- (3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed statement, it must give the issuer a decision notice setting out the terms of the statement. 15
- (4) A notice under this section must inform the issuer of his right to refer the matter to the Tribunal (see section 89L) and give an indication of the procedure on such a reference. 20
- (5) In this section “transparency obligation” means an obligation under –
  - (a) a provision of transparency rules, or
  - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home state is a member state other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2). 25

### 89J Power to suspend or prohibit trading of securities

- (1) This section applies to securities admitted to trading on a regulated market situated or operating in the United Kingdom. 30
- (2) If the competent authority has reasonable grounds for suspecting that an applicable transparency obligation has been infringed by the issuer, it may require the market operator to suspend trading in the securities for a period not exceeding 10 days.
- (3) If the competent authority has reasonable grounds for suspecting that an applicable transparency obligation has been infringed – 35
  - (a) by an issuer whose home state is not the United Kingdom, or
  - (b) by voteholders of an issuer whose home state is the United Kingdom,
 it may require the market operator to prohibit trading in the securities. 40
- (4) If the competent authority finds that an applicable transparency obligation has been infringed, it may require the market operator to prohibit trading in the securities.

- (5) In this section “transparency obligation” means an obligation under –
- (a) a provision contained in transparency rules, or
  - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home state is a member state other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2). 5
- 89K Procedure under section 89J**
- (1) A requirement under section 89J takes effect –
- (a) immediately, if the notice under subsection (2) states that that is the case; 10
  - (b) in any other case, on such date as may be specified in the notice.
- (2) If the competent authority –
- (a) proposes to exercise the powers in section 89J in relation to a person, or 15
  - (b) exercises any of those powers in relation to a person with immediate effect,
- it must give that person written notice.
- (3) The notice must –
- (a) give details of the competent authority’s action or proposed action; 20
  - (b) state the competent authority’s reasons for taking the action in question and choosing the date on which it took effect or takes effect;
  - (c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he had referred the matter to the Tribunal); 25
  - (d) inform him of the date on which the action took effect or takes effect; 30
  - (e) inform him of his right to refer the matter to the Tribunal (see section 89L) and give an indication of the procedure on such a reference.
- (4) The competent authority may extend the period within which representations may be made to it. 35
- (5) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).
- 89L Right to refer matters to the Tribunal** 40
- A person –
- (a) to whom a decision notice is given under section 89I (public censure), or
  - (b) to whom a notice is given under section 89K (procedure in connection with suspension or prohibition of trading), 45
- may refer the matter to the Tribunal.”.



*Other matters***898 Corporate governance rules**

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after the sections inserted by section 897 above insert –

*“Corporate governance”* 5

**89M Corporate governance rules**

- (1) The competent authority may make rules (“corporate governance rules”) –
- (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market; 10
  - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation. 15
- (2) “Corporate governance”, in relation to an issuer, includes –
- (a) the nature, constitution or functions of the organs of the issuer;
  - (b) the manner in which organs of the issuer conduct themselves;
  - (c) the requirements imposed on organs of the issuer; 20
  - (d) the relationship between the different organs of the issuer;
  - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer’s securities.
- (3) The burdens and restrictions imposed by rules under this section on foreign-traded issuers must not be greater than the burdens and restrictions imposed on UK-traded issuers by – 25
- (a) rules under this section, and
  - (b) listing rules.
- (4) For this purpose –
- “foreign-traded issuer” means an issuer who has requested or approved admission of the issuer’s securities to trading on a regulated market situated or operating outside the United Kingdom; 30
  - “UK-traded issuer” means an issuer who has requested or approved admission of the issuer’s securities to trading on a regulated market situated or operating in the United Kingdom. 35
- (5) This section is without prejudice to any other power conferred by this Part to make Part 6 rules.”.

**899 Liability for false or misleading statements in certain publications**

In Part 6 of the Financial Services and Markets Act 2000, after section 90 40

insert—

**“90A Compensation for statements in certain publications**

- (1) The publications to which this section applies are any reports and statements published in response to a requirement imposed by a provision implementing Article 4, 5 or 6 of the transparency obligations directive. 5
- (2) The issuer of securities traded on a regulated UK market is liable to pay compensation to a person who has—
  - (a) acquired such securities issued by it, and
  - (b) suffered loss in respect of them as a result of— 10
    - (i) any untrue or misleading statement in a publication to which this section applies, or
    - (ii) the omission from any such publication of any matter required to be included in it.
- (3) The issuer is so liable only if a person discharging managerial responsibilities within the issuer in relation to the publication— 15
  - (a) knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
  - (b) knew the omission to be dishonest concealment of a material fact. 20
- (4) A loss is not regarded as suffered as a result of the statement or omission in the publication unless the person suffering it acquired the relevant securities—
  - (a) in reliance on the information in the publication, and
  - (b) at a time when, and in circumstances in which, it was reasonable for him to rely on that information. 25
- (5) Except as mentioned in subsection (7)—
  - (a) the issuer is not subject to any other liability than that provided for by this section in respect of any such loss as is mentioned in subsection (2), and 30
  - (b) a person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.
- (6) Any reference in subsection (5) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement. 35
- (7) This section does not affect—
  - (a) the powers conferred by section 382 and 384 (powers of the court to make a restitution order and of the Authority to require restitution);
  - (b) liability for a civil penalty; 40
  - (c) liability for a criminal offence.
- (8) For the purposes of this section—
  - (a) the following are persons “discharging managerial responsibilities” in relation to a publication—
    - (i) any director of the issuer (or person occupying the position of director, by whatever name called), 45

- (ii) in the case of an issuer whose affairs are managed by its members, any member of the issuer,
- (iii) any senior executive of the issuer having responsibilities in relation to the publication;
- (b) “regulated UK market” means a regulated market situated or operating in the United Kingdom; 5
- (c) references to the acquisition by a person of securities include his contracting to acquire them or any interest in them.”.

## 900 Exercise of powers where UK is host member state

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after section 100 insert – 10

### “100A Exercise of powers where UK is host member state

- (1) This section applies to the exercise by the competent authority of any power under this Part exercisable in case of infringement of – 15
  - (a) a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or
  - (b) a provision of transparency rules or any other provision made in accordance with the transparency obligations directive,
 in relation to an issuer whose home state is a member state other than the United Kingdom. 20
- (2) The competent authority may act in such a case only in respect of the infringement of a provision required by the relevant directive. Any reference to an applicable provision or applicable transparency obligation shall be read accordingly.
- (3) If the authority finds that there has been such an infringement, it must give a notice to that effect to the competent authority of the person’s home state requesting it – 25
  - (a) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and 30
  - (b) to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures.
- (4) The authority may not act further unless satisfied – 35
  - (a) that the competent authority of the person’s home state has failed or refused to take measures for the purpose mentioned in subsection (3)(a), or
  - (b) that the measures taken by that authority have proved inadequate for that purpose.
 This does not affect exercise of the powers under section 87K(2), 87L(2) or (3) or 89J(2) or (3) (powers to protect market). 40
- (5) If the authority is so satisfied, it must, after informing the competent authority of the person’s home state, take all appropriate measures to protect investors.
- (6) In such a case the authority must inform the Commission informed of the measures at the earliest opportunity.”. 45

**901 Transparency obligations and related matters: minor and consequential amendments**

- (1) Schedule 15 to this Act makes minor and consequential amendments in connection with the provision made by this Part.
- (2) In that Schedule-
- Part 1 contains amendments of the Financial Services and Markets Act 2000 (c. 8);
  - Part 2 contains amendments of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

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**902 Corporate governance regulations**

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- (1) The Secretary of State may make regulations –
- (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
  - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation.
- (2) “Corporate governance”, in relation to an issuer, includes –
- (a) the nature, constitution or functions of the organs of the issuer;
  - (b) the manner in which organs of the issuer conduct themselves;
  - (c) the requirements imposed on organs of the issuer;
  - (d) the relationship between different organs of the issuer;
  - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer’s securities.
- (3) The regulations may –
- (a) make provision by reference to any specified code on corporate governance that may be issued from time to time by a specified body;
  - (b) create new criminal offences (subject to subsection (4));
  - (c) make provision excluding liability in damages in respect of things done or omitted for the purposes of, or in connection with, the carrying on, or purported carrying on, of any specified activities.
- “Specified” here means specified in the regulations.
- (4) The regulations may not create a criminal offence punishable by a greater penalty than –
- (a) on indictment, a fine;
  - (b) on summary conviction, a fine not exceeding the statutory maximum or (if calculated on a daily basis) £100 a day.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section “issuer”, “securities” and “regulated market” have the same meaning as in Part 6 of the Financial Services and Markets Act 2000.

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## PART 37

## MISCELLANEOUS PROVISIONS

*Regulation of actuaries etc***903 Grants to bodies concerned with actuarial standards etc**

- (1) Section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (grants to bodies concerned with accounting standards etc) is amended as follows. 5
- (2) In subsection (2) (matters carried on by bodies eligible for grants) for paragraph (l) substitute –
- “(l) issuing standards to be applied in actuarial work; 10
  - (m) issuing standards in respect of matters to be contained in reports or other communications required to be produced or made by actuaries or in accordance with standards within paragraph (l);
  - (n) investigating departures from standards within paragraph (l) or (m); 15
  - (o) taking steps to secure compliance with standards within paragraph (l) or (m);
  - (p) carrying out investigations into public interest cases arising in connection with the performance of actuarial functions by members of professional actuarial bodies; 20
  - (q) holding disciplinary hearings relating to members of professional actuarial bodies following the conclusion of investigations within paragraph (p);
  - (r) deciding whether (and, if so, what) disciplinary action should be taken against members of professional actuarial bodies to whom hearings within paragraph (q) related; 25
  - (s) supervising the exercise by professional actuarial bodies of regulatory functions in relation to their members;
  - (t) overseeing or directing any of the matters mentioned above.”. 30
- (3) In subsection (5) (definitions) at the appropriate places insert –
- ““professional actuarial body” means –
    - (a) the Institute of Actuaries, or
    - (b) the Faculty of Actuaries in Scotland,  - and the “members” of a professional actuarial body include persons who, although not members of the body, are subject to its rules in performing actuarial functions;” 35
  - ““regulatory functions”, in relation to professional actuarial bodies, means any of the following –
    - (a) investigatory or disciplinary functions exercised by such bodies in relation to the performance by their members of actuarial functions, 40
    - (b) the setting by such bodies of standards in relation to the performance by their members of actuarial functions, and 45

- (c) the determining by such bodies of requirements in relation to the education and training of their members;”.

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

- (1) Section 17 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (levy to pay expenses of bodies concerned with accounting standards etc) is amended in accordance with subsections (2) to (5). 5
- (2) In subsection (3)(a) after “to which” insert “, or persons within subsection (3A) to whom,”.
- (3) After subsection (3) insert – 10
  - “(3A) The following persons are within this subsection –
    - (a) the administrators of a public service pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993);
    - (b) the trustees or managers of an occupational or personal pension scheme (within the meaning of that section).”.15
- (4) After subsection (4)(b) insert –
  - “(c) make different provision for different cases.”.
- (5) After subsection (12) insert –
  - “(13) If a draft of any regulations to which subsection (10) applies 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.”.20
- (6) The above amendments have effect in relation to any exercise of the power to make regulations under section 17 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 after this section comes into force, regardless of when the expenses to be met by the levy in respect of which the regulations are made were incurred. 25
- (7) In Schedule 3 to the Pensions Act 2004 (c. 35) (disclosure of information held by the Pensions Regulator), in the entry relating to the Secretary of State, in the second column, for “or” at the end of paragraph (g) substitute – 30
  - “(ga) Section 17 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (levy to pay expenses of bodies concerned with accounting standards, actuarial standards etc), or”.

**905 Application of provisions to Scotland and Northern Ireland**

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- (1) Section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (grants to bodies concerned with accounting standards etc) is amended as follows.
- (2) For subsection (6) (application of section to Scotland) substitute –
  - “(6) In their application to Scotland, subsection (2)(a) to (t) are to be read as referring only to matters provision relating to which would be outside the legislative competence of the Scottish Parliament.”.40
- (3) In subsection (2) in paragraph (c), after “1985 (c. 6)” insert “or the 1986 Order”.

- (4) In subsection (5) –
- (a) in the definition of “company” after “1985 (c. 6)” insert “or the 1986 Order”,
  - (b) in the definition of “subsidiary” after “1985” insert “or Article 4 of the 1986 Order”, and 5
  - (c) after that definition insert –
    - ““the 1986 Order” means the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).”.
- (5) In section 66 of that Act (extent), in subsection (2) (provisions extending to Northern Ireland, as well as England and Wales and Scotland) for “17” substitute “16 to 18”. 10

*Disclosure of information under the Enterprise Act 2002*

**906 Disclosure of information under the Enterprise Act 2002**

In Part 9 of the Enterprise Act 2002 (c. 40) (information), after section 241 insert – 15

**“241A Civil proceedings**

- (1) A public authority which holds prescribed information to which section 237 applies may disclose that information to any person –
- (a) for the purposes of, or in connection with, prescribed civil proceedings (including prospective proceedings) in the United Kingdom, or 20
  - (b) for the purposes of obtaining legal advice in relation to such proceedings, or
  - (c) otherwise for the purposes of establishing, enforcing or defending legal rights that are or may be the subject of such proceedings. 25
- (2) Subsection (1) does not apply to –
- (a) information which comes to a public authority in connection with an investigation under Part 4, 5 or 6 of the 1973 Act or under section 11 of the Competition Act 1980; 30
  - (b) competition information within the meaning of section 351 of the Financial Services and Markets Act 2000;
  - (c) information which comes to a public authority in connection with an investigation under Part 3 or 4 or section 174 of this Act;
  - (d) information which comes to a public authority in connection with an investigation under the Competition Act 1998 (c. 41). 35
- (3) In subsection (1) “prescribed” means prescribed by order of the Secretary of State.
- (4) An order under this section –
- (a) may prescribe information, or civil proceedings, for the purposes of this section by reference to such factors as appear to the Secretary of State to be appropriate; 40
  - (b) may prescribe for the purposes of this section all information, or civil proceedings, or all information or civil proceedings not falling within one or more specified exceptions; 45

- (c) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than those specified in subsection (1).”

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*Expenses of winding up*

**907 Payment of expenses of winding up**

- (1) In Chapter 8 of Part 4 of the Insolvency Act 1986 (c. 45) (winding up of companies: provisions of general application), before section 176A (under the heading “*Property subject to floating charge*”) insert –

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**“176ZA Payment of expenses of winding up (England and Wales)**

- (1) The expenses of winding up in England and Wales, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.

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- (2) In subsection (1) –

- (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under section 176A(2)(a);

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- (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of –

- (i) the holders of debentures secured by, or holders of, the floating charge, and

- (ii) any preferential creditors entitled to be paid out of that property in priority to them.

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- (3) Provision may be made by rules restricting the application of subsection (1), in such circumstances as may be prescribed, to expenses authorised or approved –

- (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or

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- (b) by the court.

- (4) References in this section to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.”

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- (2) In Chapter 8 of Part 5 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (winding up of companies: provisions of general application), before Article 150A (under the heading “*Property subject to floating charge*”) insert –

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**“150ZA Payment of expenses of winding up**

- (1) The expenses of winding up, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any



floating charge created by the company and shall be paid out of any such property accordingly.

- (2) In paragraph (1) –
- (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under Article 150A(2)(a); 5
  - (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of –
    - (i) the holders of debentures secured by, or holders of, the floating charge, and 10
    - (ii) any preferential creditors entitled to be paid out of that property in priority to them.
- (3) Provision may be made by rules restricting the application of paragraph (1), in such circumstances as may be prescribed, to expenses authorised or approved – 15
- (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
  - (b) by the Court.
- (4) References in this Article to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.”. 20

#### *Commonhold associations*

### **908 Amendment of memorandum or articles of commonhold association**

In paragraph 3(1) of Schedule 3 to the Commonhold and Leasehold Reform Act 2002 (c. 15) (alteration of memorandum or articles by commonhold association to be of no effect until altered version registered with Land Registry) for “An alteration of the memorandum or articles of association” substitute “Where a commonhold association alters its memorandum or articles at a time when the land specified in its memorandum is commonhold land, the alteration”. 25 30

## **PART 38**

### **NORTHERN IRELAND**

### **909 Extension of Companies Acts to Northern Ireland**

- (1) The Companies Acts as defined by this Act (see section 2) extend to Northern Ireland. 35
- (2) The Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9)) and Part 3 of the Companies (Audit, Investigations and Community Enterprise) Order 2005 (S.I. 2005/1967 (N.I. 17)) shall cease to have effect accordingly. 40

### 910 Extension of GB enactments relating to SEs

- (1) The enactments in force in Great Britain relating to SEs extend to Northern Ireland.
- (2) The following enactments shall cease to have effect accordingly –
  - (a) the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (SR 2004/417), and 5
  - (b) the European Public Limited-Liability Company (Fees) Regulations (Northern Ireland) 2004 (SR 2004/418).
- (3) In this section “SE” means a European Public Limited-Liability Company (or Societas Europaea) within the meaning of Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European Company. 10

### 911 Extension of GB enactments relating to certain other forms of business organisation

- (1) The enactments in force in Great Britain relating to –
  - (a) limited liability partnerships, 15
  - (b) limited partnerships,
  - (c) open-ended investment companies, and
  - (d) European Economic Interest Groupings,extend to Northern Ireland.
- (2) The following enactments shall cease to have effect accordingly – 20
  - (a) the Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12 (N.I.));
  - (b) the Limited Partnerships Act 1907 (c. 24) as it formerly had effect in Northern Ireland;
  - (c) the Open-Ended Investment Companies Act (Northern Ireland) 2002 25 (c. 13 (N.I.));
  - (d) the European Economic Interest Groupings Regulations (Northern Ireland) 1989 (SR 1989/216).

### 912 Extension of enactments relating to business names

- (1) The provisions of Part 34 of this Act (business names) extend to Northern Ireland. 30
- (2) The Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 (N.I. 7)) shall cease to have effect accordingly.

## PART 39

### GENERAL SUPPLEMENTARY PROVISIONS 35

#### *Regulations and orders*

### 913 Regulations and orders: statutory instrument

Except as otherwise provided, regulations and orders under this Act shall be made by statutory instrument.

**914 Regulations and orders: negative resolution procedure**

Where regulations or orders under this Act are subject to “negative resolution procedure” the statutory instrument containing the regulations or order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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**915 Regulations and orders: affirmative resolution procedure**

Where regulations or orders under this Act are subject to “affirmative resolution procedure” the regulations or order must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.

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**916 Regulations and orders: approval after being made**

(1) Regulations or orders under this Act that are subject to “approval after being made” –

(a) must be laid before Parliament after being made, and

(b) cease to have effect at the end of 28 days beginning with the day on which they were made unless during that period they are approved by resolution of each House.

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(2) In reckoning the period of 28 days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

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(3) The regulations or order ceasing to have effect does not affect –

(a) anything previously done under them or it, or

(b) the making of new regulations or a new order.

**917 Regulations and orders: supplementary**

(1) Regulations or orders under this Act may –

(a) make different provision for different cases or circumstances,

(b) include supplementary, incidental and consequential provision, and

(c) make transitional provision and savings.

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(2) Any provision that may be made by regulations under this Act may be made by order; and any provision that may be made by order under this Act may be made by regulations.

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(3) Any provision that may be made by regulations or order under this Act for which no Parliamentary procedure is prescribed may be made by regulations or order subject to negative or affirmative resolution procedure.

(4) Any provision that may be made by regulations or order under this Act subject to negative resolution procedure may be made by regulations or order subject to affirmative resolution procedure.

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*Meaning of "enactment"***918 Meaning of “enactment”**

In this Act, unless the context otherwise requires, “enactment” includes –

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- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30),
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation within the meaning of the Interpretation Act 1978. 5

*Consequential and transitional provisions*

**919 Power to make consequential amendments etc**

- (1) The Secretary of State or the Treasury may by order make such provision amending, repealing or revoking any enactment to which this section applies as they consider necessary or expedient in consequence of any provision made by or under this Act. 10
- (2) This section applies to –
  - (a) any enactment passed or made before the passing of this Act,
  - (b) any enactment contained in this Act or in subordinate legislation made under it, and
  - (c) any enactment passed or made before the end of the session after that in which this Act is passed. 15
- (3) Without prejudice to the generality of the power conferred by subsection (1), orders under this section may –
  - (a) make provision extending to other forms of organisation any provision made by or under this Act in relation to companies, or
  - (b) make provision corresponding to that made by or under this Act in relation to companies,in either case with such adaptations or other modifications as appear to the Secretary of State or the Treasury to be necessary or expedient. 25
- (4) The references in subsection (3) to provision made by this Act include provision conferring power to make provision by regulations, orders or other subordinate legislation.
- (5) Amendments and repeals made under this section are additional, and without prejudice, to those made by or under any other provision of this Act. 30
- (6) Orders under this section are subject to affirmative resolution procedure.

**920 Repeals**

The enactments specified in Schedule 16, which include enactments that are no longer of practical utility, are repealed to the extent specified. 35

**921 Power to make transitional provision and savings**

- (1) The Secretary of State or the Treasury may by order make such transitional provision and savings as they consider necessary or expedient in connection with the commencement of any provision made by or under this Act.
- (2) An order may, in particular, make such adaptations of provisions brought into force as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force. 40

- (3) Transitional provision and savings made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.
- (4) Orders under this section are subject to negative resolution procedure.

## 922 Continuity of the law

- (1) This section applies where any provision of this Act re-enacts (with or without modification) an enactment repealed by this Act. 5
- (2) The repeal and re-enactment does not affect the continuity of the law.
- (3) Anything done (including subordinate legislation made), or having effect as if done, under or for the purposes of the repealed provision that could have been done under or for the purposes of the corresponding provision of this Act, if in force or effective immediately before the commencement of that corresponding provision, has effect thereafter as if done under or for the purposes of that corresponding provision. 10
- (4) Any reference (express or implied) in this Act or any other enactment, instrument or document to a provision of this Act shall be construed (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision. 15
- (5) Any reference (express or implied) in any enactment, instrument or document to a repealed provision shall be construed (so far as the context permits), as respects times, circumstances and purposes in relation to which the corresponding provision of this Act has effect, as being or (according to the context) including a reference to the corresponding provision of this Act. 20
- (6) This section has effect subject to any specific transitional provision or saving contained in this Act. 25
- (7) References in this section to this Act include subordinate legislation made under this Act.
- (8) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## PART 40 30

### FINAL PROVISIONS

## 923 Short title

The short title of this Act is the Company Law Reform Act 2006.

## 924 Extent

Except as otherwise provided (or the context otherwise requires), the provisions of this Act extend to the whole of the United Kingdom. 35

## 925 Commencement

- (1) The following provisions come into force on the day this Act is passed –

- (a) Part 36 (transparency obligations and related matters), except the amendment in paragraph 11(2) of Schedule 15 of the definition of “regulated market” in Part 6 of the Financial Services and Markets Act 2000 (c. 8),
  - (b) in Part 37 (miscellaneous amendments) – 5
    - section 903 (bodies concerned with actuarial standards), and
    - section 905 (application of provisions in Scotland and Northern Ireland),
  - (c) Part 39 (general supplementary provisions), except section 920 and Schedule 16 (repeals), and 10
  - (d) this Part.
- (2) The other provisions of this Act come into force on such day as may be appointed by order of the Secretary of State or the Treasury.
- (3) Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge. 15

## SCHEDULES

### SCHEDULE 1

Sections 237 and 238

#### CONNECTED PERSONS: REFERENCES TO AN INTEREST IN SHARES OR DEBENTURES

##### *Introduction*

- |   |   |   |
|---|---|---|
| 1 | (1) The provisions of this Schedule have effect for the interpretation of references in sections 237 and 238 (directors connected with or controlling a body corporate) to an interest in shares or debentures. | 5 |
|   | (2) The provisions are expressed in relation to shares but apply to debentures as they apply to shares.   |   |

##### *General provisions*

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- |   |   |    |
|---|---|----|
| 2 | (1) A reference to an interest in shares includes any interest of any kind whatsoever in shares.  |    |
|   | (2) Any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded. |    |
|   | (3) It is immaterial that the shares in which a person has an interest are not identifiable.  | 15 |
|   | (4) Persons having a joint interest in shares are deemed each of them to have that interest.  |    |

##### *Rights to acquire shares*

- |   |   |    |
|---|---|----|
| 3 | (1) A person is taken to have an interest in shares if he enters into a contract to acquire them.   | 20 |
|   | (2) A person is taken to have an interest in shares if –  |    |
|   | (a) he has a right to call for delivery of the shares to himself or to his order, or  |    |
|   | (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares,  | 25 |
|   | whether the right or obligation is conditional or absolute.   |    |
|   | (3) Rights or obligations to subscribe for shares are not to be taken for the purposes of sub-paragraph (2) to be rights to acquire or obligations to take an interest in shares. | 30 |
|   | (4) A person ceases to have an interest in shares by virtue of this paragraph –   |    |
|   | (a) on the shares being delivered to another person at his order –  |    |
|   | (i) in fulfilment of a contract for their acquisition by him, or  |    |
|   | (ii) in satisfaction of a right of his to call for their delivery;  |    |

- (b) on a failure to deliver the shares in accordance with the terms of such a contract or on which such a right falls to be satisfied;
- (c) on the lapse of his right to call for the delivery of shares.

*Right to exercise or control exercise of rights*

- 4 (1) A person is taken to have an interest in shares if, not being the registered holder, he is entitled – 5
- (a) to exercise any right conferred by the holding of the shares, or
  - (b) to control the exercise of any such right.
- (2) For this purpose a person is taken to be entitled to exercise or control the exercise of a right conferred by the holding of shares if he – 10
- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
  - (b) is under an obligation (whether or not so subject) the fulfilment of which would make him so entitled.
- (3) A person is not by virtue of this paragraph taken to be interested in shares by reason only that – 15
- (a) he has been appointed a proxy to exercise any of the rights attached to the shares, or
  - (b) he has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members. 20

*Bodies corporate*

- 5 (1) A person is taken to be interested in shares if a body corporate is interested in them and –
- (a) the body corporate or its directors are accustomed to act in accordance with his directions or instructions, or 25
  - (b) he is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of the body corporate.
- (2) For the purposes of sub-paragraph (1)(b) where –
- (a) a person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of a body corporate, and 30
  - (b) that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate,
- the voting power mentioned in paragraph (b) above is taken to be exercisable by that person. 35

*Trusts*

- 6 (1) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is taken to have an interest in shares, subject as follows. 40
- (2) So long as a person is entitled to receive, during the lifetime of himself or another, income from trust property comprising shares, an interest in the shares in reversion or remainder or (as regards Scotland) in fee shall be disregarded.



- (3) A person is treated as not interested in shares if and so long as he holds them –
- (a) under the law in force in any part of the United Kingdom, as a bare trustee or as a custodian trustee, or
  - (b) under the law in force in Scotland, as a simple trustee. 5
- (4) There shall be disregarded any interest of a person subsisting by virtue of –
- (a) an authorised unit trust scheme (within the meaning of section 237 of the Financial Services and Markets Act 2000 (c. 8));
  - (b) a scheme made under section 22 or 22A of the Charities Act 1960 (c. 58), section 25 of the Charities Act (Northern Ireland) 1964 (c. 33 (N.I.)) or section 24 or 25 of the Charities Act 1993 (c. 10), section 11 of the Trustee Investments Act 1961 (c. 62) or section 42 of the Administration of Justice Act 1982 (c. 53); or 10
  - (c) the scheme set out in the Schedule to the Church Funds Investment Measure 1958 (1958 No. 1). 15
- (5) There shall be disregarded any interest –
- (a) of the Church of Scotland General Trustees or of the Church of Scotland Trust in shares held by them;
  - (b) of any other person in shares held by those Trustees or that Trust otherwise than as simple trustees. 20
- “The Church of Scotland General Trustees” are the body incorporated by the order confirmed by the Church of Scotland (General Trustees) Order Confirmation Act 1921 (1921 c. xxv), and “the Church of Scotland Trust” is the body incorporated by the order confirmed by the Church of Scotland Trust Order Confirmation Act 1932 (1932 c. xxi). 25

## SCHEDULE 2

Section 648

## SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURES ETC FOR THE PURPOSES OF SECTION 648

## PART 1

## SPECIFIED PERSONS

- 1 The Secretary of State. 30
- 2 The Department of Enterprise, Trade and Investment for Northern Ireland.
- 3 The Treasury.
- 4 The Bank of England.
- 5 The Financial Services Authority.
- 6 The Commissioners for Her Majesty’s Revenue and Customs. 35
- 7 The Lord Advocate.
- 8 The Director of Public Prosecutions.
- 9 The Director of Public Prosecutions for Northern Ireland.
- 10 A constable.

- 11 A procurator fiscal.  
12 The Scottish Ministers.

## PART 2

## SPECIFIED DESCRIPTIONS OF DISCLOSURES

- |    |   |    |
|----|---|----|
| 13 | A disclosure for the purpose of enabling or assisting a person authorised under section 441 of this Act (persons authorised to apply to court) to exercise his functions.<br>Until the coming into force of section 441, the reference to that section is to be read as a reference to section 245C of the Companies Act 1985 (c. 6). | 5  |
| 14 | A disclosure for the purpose of enabling or assisting an inspector appointed under Part 14 of the Companies Act 1985 (investigation of companies and their affairs, etc) to exercise his functions.   | 10 |
| 15 | A disclosure for the purpose of enabling or assisting a person authorised under section 447 of the Companies Act 1985 (power to require production of documents) or section 84 of the Companies Act 1989 (c. 40) (exercise of powers by officer etc) to exercise his functions.   | 15 |
| 16 | A disclosure for the purpose of enabling or assisting a person appointed under section 167 of the Financial Services and Markets Act 2000 (c. 8) (general investigations) to conduct an investigation to exercise his functions.  |    |
| 17 | A disclosure for the purpose of enabling or assisting a person appointed under section 168 of the Financial Services and Markets Act 2000 (investigations in particular cases) to conduct an investigation to exercise his functions.   | 20 |
| 18 | A disclosure for the purpose of enabling or assisting a person appointed under section 169(1)(b) of the Financial Services and Markets Act 2000 (investigation in support of overseas regulator) to conduct an investigation to exercise his functions.   | 25 |
| 19 | A disclosure for the purpose of enabling or assisting the body corporate responsible for administering the scheme referred to in section 225 of the Financial Services and Markets Act 2000 (the ombudsman scheme) to exercise its functions.   | 30 |
| 20 | A disclosure for the purpose of enabling or assisting a person appointed under paragraph 4 (the panel of ombudsmen) or 5 (the Chief Ombudsman) of Schedule 17 to the Financial Services and Markets Act 2000 to exercise his functions.   | 35 |
| 21 | A disclosure for the purpose of enabling or assisting a person appointed under regulations made under section 262(1) and (2)(k) of the Financial Services and Markets Act 2000 (investigations into open-ended investment companies) to conduct an investigation to exercise his functions.   |    |
| 22 | A disclosure for the purpose of enabling or assisting a person appointed under section 284 of the Financial Services and Markets Act 2000 (investigations into affairs of certain collective investment schemes) to conduct an investigation to exercise his functions.   | 40 |
| 23 | A disclosure for the purpose of enabling or assisting the investigator appointed under paragraph 7 of Schedule 1 to the Financial Services and  | 45 |

	Markets Act 2000 (arrangements for investigation of complaints) to exercise his functions.	
24	A disclosure for the purpose of enabling or assisting a person appointed by the Treasury to hold an inquiry into matters relating to financial services (including an inquiry under section 15 of the Financial Services and Markets Act 2000 (c. 8)) to exercise his functions.	5
25	A disclosure for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise any of their functions under any of the following—	
	(a) the Companies Acts;	
	(b) Part 5 of the Criminal Justice Act 1993 (c. 36) (insider dealing);	10
	(c) the Insolvency Act 1986 (c. 45);	
	(d) the Company Directors Disqualification Act 1986 (c. 46);	
	(e) Part 35 of this Act (statutory auditors);	
	(f) Part 3 (investigations and powers to obtain information) or 7 (financial markets and insolvency) of the Companies Act 1989 (c. 40);	15
	(g) the Financial Services and Markets Act 2000.	
	Until the coming into force of Part 35 of this Act, the reference to it in paragraph (e) is to be read as a reference to Part 2 of the Companies Act 1989.	
26	A disclosure for the purpose of enabling or assisting the Scottish Ministers to exercise their functions under the enactments relating to insolvency.	20
27	A disclosure for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency.	
28	A disclosure for the purpose of enabling or assisting a person appointed or authorised by the Department of Enterprise, Trade and Investment for Northern Ireland under the enactments relating to companies or insolvency to exercise his functions.	25
29	A disclosure for the purpose of enabling or assisting the Pensions Regulator to exercise the functions conferred on it by or by virtue of any of the following—	30
	(a) the Pension Schemes Act 1993 (c. 48);	
	(b) the Pensions Act 1995 (c. 26);	
	(c) the Welfare Reform and Pensions Act 1999 (c. 30);	
	(d) the Pensions Act 2004 (c. 35);	35
	(e) any enactment in force in Northern Ireland corresponding to any of those enactments.	
30	A disclosure for the purpose of enabling or assisting the Board of the Pension Protection Fund to exercise the functions conferred on it by or by virtue of Part 2 of the Pensions Act 2004 or any enactment in force in Northern Ireland corresponding to that Part.	40
31	A disclosure for the purpose of enabling or assisting—	
	(a) the Bank of England,	
	(b) the European Central Bank, or	
	(c) the central bank of any country or territory outside the United Kingdom,	45
	to exercise its functions.	

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| 32 | A disclosure for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions.  |  |
| 33 | A disclosure for the purpose of enabling or assisting organs of the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982 (c. xiv)) to exercise their functions under or by virtue of the Lloyd's Acts 1871 to 1982.  | 5  |
| 34 | A disclosure for the purpose of enabling or assisting the Office of Fair Trading to exercise its functions under any of the following –<br>(a) the Fair Trading Act 1973 (c. 41);<br>(b) the Consumer Credit Act 1974 (c. 39);<br>(c) the Estate Agents Act 1979 (c. 38);<br>(d) the Competition Act 1980 (c. 21);<br>(e) the Competition Act 1998 (c. 41);<br>(f) the Financial Services and Markets Act 2000 (c. 8);<br>(g) the Enterprise Act 2002 (c. 40);<br>(h) the Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915);<br>(i) the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083). | 10<br><br><br><br><br><br><br><br><br><br>15 |
| 35 | A disclosure for the purpose of enabling or assisting the Competition Commission to exercise its functions under any of the following –<br>(a) the Fair Trading Act 1973;<br>(b) the Competition Act 1980;<br>(c) the Competition Act 1998;<br>(d) the Enterprise Act 2002.   | 20<br><br><br><br>25                         |
| 36 | A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Competition Appeal Tribunal.   |  |
| 37 | A disclosure for the purpose of enabling or assisting an enforcer under Part 8 of the Enterprise Act 2002 (enforcement of consumer legislation) to exercise its functions under that Part.  | 30   |
| 38 | A disclosure for the purpose of enabling or assisting the Charity Commission to exercise its functions.   |  |
| 39 | A disclosure for the purpose of enabling or assisting the Attorney General to exercise his functions in connection with charities.  |  |
| 40 | A disclosure for the purpose of enabling or assisting the National Lottery Commission to exercise its functions under sections 5 to 10 (licensing) and 15 (power of Secretary of State to require information) of the National Lottery etc. Act 1993 (c. 39).   | 35   |
| 41 | A disclosure by the National Lottery Commission to the National Audit Office for the purpose of enabling or assisting the Comptroller and Auditor General to carry out an examination under Part 2 of the National Audit Act 1983 (c. 44) into the economy, effectiveness and efficiency with which the National Lottery Commission has used its resources in discharging its functions under sections 5 to 10 of the National Lottery etc. Act 1993.   | 40   |

42	A disclosure for the purpose of enabling or assisting a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083) to exercise its functions under those Regulations.	
43	A disclosure for the purpose of enabling or assisting an enforcement authority under the Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334) to exercise its functions under those Regulations.	5
44	A disclosure for the purpose of enabling or assisting an enforcement authority under the Financial Services (Distance Marketing) Regulations 2004 (S.I. 2004/2095) to exercise its functions under those Regulations.	
45	A disclosure for the purpose of enabling or assisting a local weights and measures authority in England and Wales to exercise its functions under section 230(2) of the Enterprise Act 2002 (c. 40) (notice of intention to prosecute, etc).	10
46	A disclosure for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following –	15
	(a) the legislation relating to friendly societies or to industrial and provident societies;	
	(b) the Building Societies Act 1986 (c. 53);	
	(c) Part 7 of the Companies Act 1989 (c. 40) (financial markets and insolvency);	20
	(d) the Financial Services and Markets Act 2000 (c. 8).	
47	A disclosure for the purpose of enabling or assisting the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 (official listing) to exercise its functions under that Part.	
48	A disclosure for the purpose of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager) to exercise its functions.	25
49	A disclosure for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to exercise its functions as such.	30
	“Recognised investment exchange” and “recognised clearing house” have the same meaning as in section 285 of the Financial Services and Markets Act 2000.	
50	A disclosure for the purpose of enabling or assisting a person approved under the Uncertificated Securities Regulations 2001 (S.I. 2001/3755) as an operator of a relevant system (within the meaning of those regulations) to exercise his functions.	35
51	A disclosure for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designated professional bodies) to exercise its functions in its capacity as a body designated under that section.	40
52	A disclosure with a view to the institution of, or otherwise for the purposes of, civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000.	
53	A disclosure for the purpose of enabling or assisting a body designated by order under section 881 of this Act (delegation of functions of Secretary of State) to exercise its functions under Part 35 of this Act (statutory auditors).	45

	Until the coming into force of that Part, the references to section 881 and Part 35 are to be read as references to section 46 of the Companies Act 1989 (c. 40) and Part 2 of that Act respectively.	
54	A disclosure for the purpose of enabling or assisting a recognised supervisory or qualifying body, within the meaning of Part 35 of this Act, to exercise its functions as such.	5
	Until the coming into force of that Part, the reference to it is to be read as a reference to Part 2 of the Companies Act 1989.	
55	A disclosure for the purpose of enabling or assisting an official receiver (including the Accountant in Bankruptcy in Scotland and the Official Assignee in Northern Ireland) to exercise his functions under the enactments relating to insolvency.	10
56	A disclosure for the purpose of enabling or assisting the Insolvency Practitioners Tribunal to exercise its functions under the Insolvency Act 1986 (c. 45).	15
57	A disclosure for the purpose of enabling or assisting a body that is for the time being a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 (recognised professional bodies) to exercise its functions as such.	
58	A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions. “Overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.	20
59	A disclosure for the purpose of enabling or assisting the Regulator of Community Interest Companies to exercise functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).	25
60	A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.	
61	A disclosure for the purpose of enabling or assisting a person authorised by the Secretary of State under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (c. 29) to exercise his functions.	30
62	A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under section 6, 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46) (disqualification for unfitness).	
63	A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal.	35
64	A disclosure for the purposes of proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001 (S.I. 2001/3592).	40
65	A disclosure for the purposes of proceedings before the Pensions Regulator Tribunal.	
66	A disclosure for the purpose of enabling or assisting a body appointed under section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (supervision of periodic accounts and reports of issuers	45

	of listed securities) to exercise functions mentioned in subsection (2) of that section.	
67	A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a solicitor, barrister, advocate, foreign lawyer, auditor, accountant, valuer or actuary of his professional duties. “Foreign lawyer” has the meaning given by section 89(9) of the Courts and Legal Services Act 1990 (c. 41).	5
68	A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a public servant of his duties. “Public servant” means an officer or employee of the Crown or of any public or other authority for the time being designated for the purposes of this paragraph by the Secretary of State by order subject to negative resolution procedure.	10  15
69	A disclosure for the purpose of the provision of a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained.	
70	A disclosure in pursuance of any Community obligation.	
	PART 3	20
	OVERSEAS REGULATORY BODIES	
71	A disclosure is made in accordance with this Part of this Schedule if – (a) it is made to a person or body within paragraph 72, and (b) it is made for the purpose of enabling or assisting that person or body to exercise the functions mentioned in that paragraph.	25
72	The persons or bodies that are within this paragraph are those exercising 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.	
73	In determining whether to disclose information to a person or body in accordance with this Part of this Schedule, the Panel must have regard to the following considerations – (a) whether the use that the person or body is likely to make of the information is sufficiently important to justify making the disclosure; (b) whether the person or body has adequate arrangements to prevent the information from being used or further disclosed otherwise than for the purposes of carrying out the functions mentioned in paragraph 72 or any other purposes substantially similar to those for which information disclosed to the Panel could be used or further disclosed.	30  35  40

SCHEDULE 3

Section 675

AMENDMENTS TO PART 13A OF THE COMPANIES ACT 1985

*Section 428: meaning of “takeover offer”*

- 1 (1) Section 428 of the Companies Act 1985 (c. 6) is amended as follows.
- (2) In subsection (3) (certain differences in terms of offer to be disregarded), for “notwithstanding any” substitute “notwithstanding –
  - (a) any difference permitted by subsection (3A), or
  - (b) any”.
- (3) After that subsection insert –
  - “(3A) A difference is permitted by this subsection where –
    - (a) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry; and
    - (b) the difference is in the value of consideration offered for the shares allotted earlier as against that offered for those allotted later, and merely reflects the difference in entitlement to the dividend.”.
- (4) After subsection (4) insert –
  - “(4A) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Part if –
    - (a) those shareholders have no registered address in the United Kingdom;
    - (b) the offer was not communicated to those shareholders in order not to contravene the law of a country or territory outside the United Kingdom; and
    - (c) either –
      - (i) the offer is published in the Gazette, or
      - (ii) the offer can be inspected, or a copy of it obtained, at a place in an EEA State or on a website, and a notice is published in the Gazette specifying the address of that place or website.
  - (4B) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside the United Kingdom, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Part.
  - (4C) It is not to be inferred –
    - (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Part unless the requirements of paragraphs (a) to (c) of subsection (4A) are met; or
    - (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those



purposes unless the reason for the impossibility or difficulty is the one mentioned in subsection (4B).”.

- (5) In subsection (5) (shares already held by the offeror) –
- (a) after “contracted to acquire” insert “(whether unconditionally or subject to conditions being met)”; 5
  - (b) for the words after “the subject of a contract” substitute “intended to secure that the holder will accept the offer when it is made, being a contract entered into –
    - (a) by deed and for no consideration;
    - (b) for consideration of negligible value; or 10
    - (c) for consideration consisting of a promise by the offeror to make the offer”.
- (6) In subsection (6) (adaptation for Scotland), for ““and under seal”” substitute ““by deed and””.
- (7) After that subsection insert – 15
- “(6A) In this Part “date of the offer” means –
- (a) where the offer is published, the date of publication;
  - (b) where the offer is not published, or where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given.”. 20
- (8) In subsection (7) (revised offers), for the words from “and references” to the end substitute “and references in subsection (6A) to the offer shall accordingly be construed as references to the original offer”.

*Section 429: right of offeror to buy out minority shareholders*

- 2 (1) Section 429 of the Companies Act 1985 (c. 6) is amended as follows. 25
- (2) For subsections (1) and (2) (which determine when the right to buy out arises) substitute –
- “(1) Subsection (1A) applies in a case where a takeover offer does not relate to shares of different classes.
- (1A) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire – 30
- (a) not less than nine-tenths in value of the shares to which the offer relates, and
  - (b) in a case where the shares to which the offer relates are voting shares, not less than nine-tenths of the voting rights carried 35 by those shares,
- he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (2) Subsection (2A) applies in a case where a takeover offer relates to shares of different classes. 40
- (2A) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire –
- (a) not less than nine-tenths in value of the shares of any class to which the offer relates, and 45

- (b) in a case where the shares of that class are voting shares, not less than nine-tenths of the voting rights carried by those shares,  
he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.” 5
- (3) After subsection (2A) (substituted by sub-paragraph (2) above) insert –
- “(2B) In the case of a takeover offer which includes among the shares to which it relates – 10
- (a) shares that are allotted after the date of the offer, or
- (b) relevant treasury shares (within the meaning of section 428) that cease to be held as treasury shares after the date of the offer,  
the offeror’s entitlement to give a notice under subsection (1A) or (2A) on any particular date shall be determined as if the shares to which the offer relates did not include any allotted, or ceasing to be held as treasury shares, on or after that date.”. 15
- (4) For subsection (3) (when notice to be given) substitute –
- “(3) No notice shall be given under subsection (1A) or (2A) after the end of – 20
- (a) the period of three months beginning with the day after the last day on which the offer can be accepted; or
- (b) the period of six months beginning with the date of the offer, where that period ends earlier and the offer is one to which subsection (3A) applies. 25
- (3A) This subsection applies to an offer if the time allowed for acceptance of the offer is not governed by rules under section 643(1) of the Company Law Reform Act 2006 that give effect to Article 7 of the Takeovers Directive. 30  
In this subsection “the Takeovers Directive” has the same meaning as in section 643 of that Act.”.
- (5) After subsection (3A) (inserted by sub-paragraph (4) above) insert –
- “(3B) Subsection (3C) applies where – 35
- (a) the requirements for the giving of a notice under subsection (1A) or (2A) are satisfied; and
- (b) there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.
- (3C) The offeror’s entitlement to give a notice under subsection (1A) or (2A) shall be determined as if – 40
- (a) the shares to which the offer relates included shares falling within paragraph (b) of subsection (3B); and
- (b) in relation to shares falling within that paragraph, the words “by virtue of acceptances of the offer” in subsection (1A) or (2A) were omitted.”. 45

(6) For the words before paragraph (a) of subsection (8) substitute –

“(8) Subsection (8A) applies where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer. 5

(8A) If –”.

(7) In subsection (8A) (formed by sub-paragraph (6) above), in paragraph (a), for “they” substitute “the shares”.

*Section 430: effect of notice under section 429* 10

3 (1) Section 430 of the Companies Act 1985 (c. 6) is amended as follows.

(2) After subsection (3) (choice of consideration) insert –

“(3A) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.”. 15

(3) In subsection (4) (consideration taken to be cash equivalent) –

- (a) for the words before paragraph (a) substitute “If the consideration offered to or (as the case may be) chosen by the holder of the shares”;
- (b) for “the chosen consideration” substitute “the consideration offered or (as the case may be) chosen”. 20

*Section 430A: right of minority shareholder to be bought out by offeror*

4 (1) Section 430A of the Companies Act 1985 is amended as follows.

(2) For subsections (1) to (2) (which determine when the right to be bought out arises) substitute –

“(1A) Subsections (1B) and (1C) apply in a case where a takeover offer relates to all the shares in a company. 25

For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of section 428.

(1B) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted – 30

(a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates; and 35

(b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met) – 40

(i) amount to not less than nine-tenths in value of all the voting shares in the company (or would do so but for section 430G(1)), and

- (ii) carry not less than nine-tenths of the voting rights in the company (or would do so but for section 430G(1)).
- (1C) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted –
  - (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates; and
  - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met), amount to not less than nine-tenths in value of all the shares in the company (or would do so but for section 430G(1)).
- (2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted –
  - (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares of any class to which the offer relates, and
  - (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met) –
    - (i) amount to not less than nine-tenths in value of all the shares of that class, and
    - (ii) in a case where the shares of that class are voting shares, carry not less than nine-tenths of the voting rights carried by the shares of that class,

the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.”.
- (3) In subsection (2A) (calculation of nine-tenths of value of shares), for “(1) and (2)” substitute “(1B), (1C) and (2)”.
- (4) After that subsection insert –
  - “(2B) Rights conferred on the holder of shares by subsection (1B), (1C) or (2) are exercisable by a written communication addressed to the offeror.
  - (2C) Rights conferred on the holder of shares by subsection (1B), (1C) or (2) are not exercisable after the end of the period of three months from –
    - (a) the end of the period within which the offer can be accepted; or
    - (b) if later, the date of the notice that must be given under subsection (3).”.
- (5) For subsection (3) (notice of shareholder’s rights to be given by offeror)

substitute –

- “(3) Within one month of the time specified in subsection (1B), (1C) or (2), as the case may be, the offeror shall give any shareholder who has not accepted the offer notice in the prescribed manner of –
- (a) the rights that are exercisable by the shareholder under that subsection, and 5
  - (b) the period within which the rights are exercisable; and if the notice is given before the end of the period within which the offer can be accepted, it shall state that the offer is still open for acceptance.” 10
- (6) After that subsection insert –
- “(3A) Subsection (3B) applies where –
- (a) a shareholder exercises rights conferred on him by subsection (1B), (1C) or (2);
  - (b) at the time when he does so, there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional; and 15
  - (c) the requirement imposed by subsection (1B)(b), (1C)(b) or (2)(b) (as the case may be) would not be satisfied if those shares were not taken into account. 20
- (3B) The shareholder shall be treated for the purposes of section 430B as not having exercised his rights under this section unless the requirement imposed by paragraph (b) of subsection (1B), (1C) or (2) (as the case may be) would be satisfied if – 25
- (a) the reference in that paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire; and 30
  - (b) the reference in that subsection to the period within which the offer can be accepted were a reference to the period referred to in subsection (2C).”.
- (7) Subsection (4) (period during which shareholder’s rights exercisable) is omitted. 35

*Section 430B: effect of notice under section 430A*

- 5 (1) Section 430B of the Companies Act 1985 (c. 6) is amended as follows.
- (2) After subsection (3) (choice of consideration) insert –
- “(3A) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.” 40
- (3) In subsection (4) (consideration taken to be cash equivalent) –
- (a) for the words before paragraph (a) substitute “If the consideration offered to or (as the case may be) chosen by the holder of the shares”;
  - (b) for “the chosen consideration” substitute “the consideration offered or (as the case may be) chosen”. 45

*Section 430C: applications to the court*

- 6 (1) Section 430C of the Companies Act 1985 (c. 6) is amended as follows.
- (2) After subsection (3) insert –
- “(3A) On an application under subsection (1) or (3) –
- (a) the court shall not require consideration of a higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair; 5
- (b) the court shall not require consideration of a lower value than the offer value to be given for the shares.” 10
- (3) In subsection (5) (power of court to authorise notice under section 429 where offer not accepted to necessary extent because shareholders untraceable) –
- (a) for “subsection (1) or (2)” substitute “subsection (1A) or (2A)”;
- (b) for paragraph (b) substitute – 15
- “(b) that the requirements of that subsection would have been met if the person, or all the persons, mentioned in paragraph (a) above had accepted the offer; and”.
- (4) After that subsection insert –
- “(6) A holder of shares who has made an application under subsection (1) or (3) shall give notice of the application to the offeror. 20
- (7) An offeror who is given notice of an application under subsection (1) or (3) shall give a copy of the notice to –
- (a) any person (other than the applicant) to whom a notice has been given under section 429; 25
- (b) any person who has exercised his rights under section 430A.
- (8) An offeror who makes an application under subsection (3) shall give notice of the application to –
- (a) any person to whom a notice has been given under section 429; 30
- (b) any person who has exercised his rights under section 430A.”.

*Section 430D: joint offers*

- 7 (1) Section 430D of the Companies Act 1985 is amended as follows.
- (2) For subsection (2) substitute – 35
- “(2) The conditions for the exercise of the rights conferred by section 429 shall be satisfied by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases). 40
- (2A) The conditions for the exercise of the rights conferred by section 430A shall be satisfied –

- (a) as respects acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
- (b) in other cases, by the joint offerors acquiring or contracting (whether conditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately. 5
- (2B) Subject to the following provisions, the rights and obligations of the offeror under sections 429 to 430B shall be respectively joint rights and joint and several obligations of the joint offerors.”.
- (3) In subsection (3) (notices etc may be given by or to any one of joint offerors), for “those sections” substitute “sections 429 to 430C”. 10

*Section 430E: associates*

- 8 (1) Section 430E of the Companies Act 1985 (c. 6) is amended as follows.
- (2) In subsection (1) (takeover offer need not include associates’ shares), for “the time when the offer is made” substitute “the date of the offer”. 15
- (3) After that subsection insert—
- “(1A) In subsection (1) “contracted” means contracted unconditionally or subject to conditions being met.”.
- (4) In subsection (2) (shares acquired etc by associates of offeror: section 429(8))— 20
- (a) for “the period within which a takeover offer can be accepted” substitute “the period mentioned in subsection (8) of section 429”;
- (b) before “contracts” insert “unconditionally”;
- (c) for “subsection (8)(a) or (b) of section 429” substitute “paragraph (a) or (b) of subsection (8A) of that section”. 25
- (5) In subsection (3) (shares acquired etc by associates of offeror: section 430A), for “In section 430A(1)(b) and (2)(b) the reference” substitute “A reference in section 429(3B) or section 430A(1B)(b), (1C)(b), (2)(b), (3A) or (3B)”.

*Interpretation etc*

- 9 After section 430F of the Companies Act 1985 insert— 30
- “430G Debentures carrying voting rights**
- (1) For the purposes of this Part of this Act debentures issued by a company to which subsection (2) applies shall be treated as shares in the company if they carry voting rights.
- (2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market. 35
- (3) In this Part of this Act, in relation to debentures treated as shares by virtue of subsection (1)—
- (a) references to the holder of shares or a shareholder shall be construed accordingly; 40
- (b) references to shares being allotted shall be construed as references to debentures being issued.

### 430H Interpretation

- (1) In this Part of this Act—  
“date of the offer” has the meaning given by section 428(6A);  
“non-voting shares” means shares that are not voting shares;  
“voting rights” means rights to vote at general meetings of the company, including rights that arise only in certain circumstances;  
“voting shares” means shares carrying voting rights. 5
- (2) For the purposes of this Part of this Act a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not (or is no longer) subject to conditions or if all conditions to which it was subject have been met. 10  
A reference to a contract becoming unconditional is to be construed accordingly.”.

### SCHEDULE 4

Section 777 15

#### AMENDMENTS OF REMAINING PROVISIONS OF THE COMPANIES ACT 1985 RELATING TO OFFENCES

##### *Misleading, false or deceptive statement in connection with valuation of non-cash consideration etc*

- 1 In section 110 of the Companies Act 1985 (entitlement of valuer to full disclosure), for subsections (2) and (3) substitute— 20
- “(2) A person who knowingly or recklessly makes a statement to which this subsection applies that is misleading, false or deceptive in a material particular commits an offence.
- (3) Subsection (2) applies to a statement— 25
- (a) made (whether orally or in writing) to a person carrying out a valuation or making a report under section 108 or 109, and
- (b) conveying or purporting to convey any information or explanation which that person requires, or is entitled to require, under subsection (1) above. 30
- (4) A person guilty of an offence under subsection (2) 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— 35
- (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).” 40

##### *Valuation procedures: matters to be communicated to registrar*

- 2 For section 111 of the Companies Act 1985 (matters to be communicated to



the registrar) substitute –

**“111ZA Matters to be communicated to registrar: asset valuation report**

- (1) A company to which a report is made under section 108 as to the value of any consideration for which, or partly for which, it proposes to allot shares must deliver a copy of the report to the registrar for registration. 5
- (2) The copy must be delivered at the same time that the company files the return of the allotment of those shares under section 545 of the Company Law Reform Act 2006 (return of allotment by limited company). 10
- (3) If default is made in complying with subsection (1) or (2), 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 –
  - (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. 15
- (5) In the case of default in delivering to the registrar any document as required by this section, the company, or any person liable for the default, may apply to the court for relief. 20
- (6) The court, if satisfied –
  - (a) that the omission to deliver the document was accidental or due to inadvertence, or
  - (b) 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. 25

**111ZB Matters to be communicated to registrar: copy of resolution as to transfer of asset etc**

- (1) A company that has passed a resolution under section 104 with respect to the transfer of an asset must, within 15 days of doing so, deliver to the registrar a copy of the resolution together with the valuer’s report required by that section. 30
- (2) If a company fails to comply with subsection (1), an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company 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

*Contravention of certain provisions relating to the amount to be paid for shares and means of payment*

3 For section 114 of the Companies Act 1985 substitute –

**“114 Penalty for contravention of ss.99 to 104 and 106**

- (1) If a company contravenes any of the provisions of sections 99 to 104 and 106, an offence is committed by – 5
- (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 – 10
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

*Failure to give notice to registrar of reorganisation of share capital*

4 For section 122(2) (failure to give notice to registrar of reorganisation of share capital) of the Companies Act 1985 substitute – 15

- “(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, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”. 20

*Failure to send registrar statement or notice of particulars of shares carrying special rights*

5 For section 128(5) of the Companies Act 1985 (c. 6) (failure to register allotment etc of shares carrying special rights) substitute – 25

- “(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. 30
- (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.”.

*Failure to deliver to registrar statement or notice of newly created class rights* 35

6 For section 129(4) of the Companies Act 1985 (failure to register newly created class rights) substitute –

- “(4) If a company fails to comply with this section, an offence is committed by –
- (a) the company, and 40
  - (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.”.

*Concealment of name of creditor entitled to object to reduction of capital, or wilful misrepresentation of nature or amount of claim, etc* 5

- 7 (1) Section 141 of the Companies Act 1985 (c. 6) (penalty for concealment or misrepresentation of details of creditor in connection with reduction of capital) is amended as follows.
- (2) Make the existing provision subsection (1). 10
- (3) Omit “and liable to a fine”.
- (4) At the end add –
- “(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.”. 15

*Director authorising or permitting non-compliance with requirement to convene company meeting to consider serious loss of capital*

- 8 (1) In section 142(2) of the Companies Act 1985 (failure to convene meeting to consider serious loss of capital) for “is liable to a fine” substitute “commits an offence”. 20
- (2) After that provision insert –
- “(2A) 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

*Unlawful acquisition by company of its own shares*

- 9 (1) In subsection (2) of section 143 of the Companies Act 1985 (prohibition against acquisition by company of its own shares) omit “the company is liable to a fine, and every officer of the company who is in default is liable to imprisonment or a fine, or both; and,”. 30
- (2) At the end of that section add –
- “(4) If a company purports to act in contravention of this section an offence is committed by –
- (a) the company, and 35
- (b) 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 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).”.	5
<i>Failure to cancel own shares acquired by company or to apply for re-registration as private company</i>		
10	(1) In subsection (2) of section 149 of the Companies Act 1985 (c. 6) (penalty for failure to cancel own shares or to re-register as private company when required to do so) for the words “the company” to the end substitute “an offence is committed by –	10
	(a) the company, and	
	(b) every officer of the company who is in default.”.	
	(2) At the end of that section add –	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.”.	
<i>Contravention of provisions dealing with treasury shares</i>		
11	For section 162G of the Companies Act 1985 (failure to comply with requirements in relation to treasury shares) substitute –	20
	<b>“162G Treasury shares: penalty for contravention</b>	
	(1) If a company contravenes any of the provisions of sections 162A to 162F, an offence is committed by –	25
	(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 –	
	(a) on conviction on indictment, to a fine;	
	(b) on summary conviction, to a fine not exceeding the statutory maximum.”.	30
<i>Failure to comply with disclosure obligations in connection with purchase of own shares</i>		
12	For section 169(6) of the Companies Act 1985 (failure to comply with disclosure requirements in connection with purchase of own shares) substitute –	35
	“(6) If default is made in delivering to the registrar any return or statement required by this section, an offence is committed by every officer of the company who is in default.	
	(6A) A person guilty of an offence under subsection (6) is liable –	
	(a) on conviction on indictment, to a fine;	40
	(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.”.	

*Failure to deliver to registrar return of cancellation or disposal of treasury shares*

- 13 For section 169A(4) of the Companies Act 1985 (c. 6) (failure to deliver to registrar return in connection with cancellation or disposal of treasury shares) substitute –
- “(4) If default is made in delivering to the registrar any return or statement required by this section, an offence is committed by 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 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.”. 10

*Refusal of inspection of directors’ statement and auditors’ report relating to payment out of capital*

- 14 For section 175(7) of the Companies Act 1985 (refusal of inspection of directors’ statement and auditors’ report relating to payment out of capital) substitute –
- “(7) If an inspection under subsection (6) is refused, an offence is committed by –
- (a) the company, and 20
- (b) every officer of the company who is in default.
- (8) A person guilty of an offence under subsection (7) 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

*Failure to give notice to registrar of application to court or to deliver copy of court order*

- 15 For section 176(4) of the Companies Act 1985 (failure to give notice to registrar of application to court or to deliver copy of court order) substitute –
- “(4) If a company fails to comply with subsection (3), an offence is committed by – 30
- (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.”. 35

*Failure to make ready certificates following allotment or transfer of shares*

- 16 For section 185(5) of the Companies Act 1985 (failure to prepare share certificates, etc) substitute –
- “(5) If default is made in complying with subsection (1), an offence is committed by every officer of the company who is in default. 40

- (5A) 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.”
- Offences in connection with share warrants (Scotland)* 5
- 17 (1) Section 189 of the Companies Act 1985 (c. 6) (offences in connection with share warrants (Scotland)) is amended as follows.
- (2) In subsection (1), for the words “he is on conviction thereof” to the end substitute “he commits an offence.”
- (3) In subsection (2), for the words “he is on conviction thereof” to the end substitute “he commits an offence.” 10
- (4) At the end add –
- “(3) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale (or both). 15
- (4) A person guilty of an offence under subsection (2) is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).” 20
- Failure to send to registrar particulars of charge or of issue of debentures (England and Wales)*
- 18 (1) In subsection (3) of section 399 of the Companies Act 1985 (failure to send to registrar particulars of charge or of issue of debentures) for the words “the company” to the end substitute “an offence is committed by – 25
- (a) the company, and
- (b) every officer of the company who is in default.”.
- (2) At the end of that section add –
- “(4) A person guilty of an offence under this section is liable – 30
- (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.”.
- Failure to send to registrar particulars of charge on property acquired (England and Wales)* 35
- 19 For section 400(4) of the Companies Act 1985 (failure to send to registrar particulars of charge on property acquired) substitute –
- “(4) If default is made in complying with this section, an offence is committed by –
- (a) the company, and 40
- (b) 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;	
	(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.”.	
<i>Delivery of debenture etc without endorsement of certificate of registration of charge (England and Wales)</i>		5
20	(1) In subsection (3) of section 402 of the Companies Act 1985 (c. 6) (delivery of debenture without required endorsement) for the words “he is liable” to the end substitute “he commits an offence.”.	
	(2) At the end of that section add –	10
	“(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.”.	
<i>Failure to give notice of appointment of receiver or manager, or of his ceasing to act (England and Wales)</i>		
21	For section 405(4) of the Companies Act 1985 (notice to registrar of enforcement of security) substitute –	15
	“(4) A person who makes default in complying with the requirements of this section commits an offence.	
	(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
<i>Omission of entry from company’s register of charges (England and Wales)</i>		
22	(1) In subsection (3) of section 407 of the Companies Act 1985 (failure of officer to make required entry in company’s register of charges) for “he is liable to a fine” substitute “he commits an offence”.	25
	(2) At the end of that section add –	
	“(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.”.	30
<i>Refusal of inspection of charging instrument or of register of charges (England and Wales)</i>		
23	For section 408(3) of the Companies Act 1985 (refusal of inspection of charging instrument or register of charges) substitute –	
	“(3) If inspection of copies, or of the register, is refused, an offence is committed by –	35
	(a) the company, and	
	(b) every officer of the company who is in default.	
	(3A) 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,	40

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

*Failure to send to registrar particulars of charge or issue of debentures (Scotland)*

- 24 (1) In subsection (3) of section 415 of the Companies Act 1985 (c. 6) (Scotland: failure to send registrar particulars of charge or issue of debenture) for the words “the company and every officer of it” to the end substitute “an offence is committed by – 5
- (a) the company, and
  - (b) every officer of the company who is in default.”.
- (2) At the end of that section add – 10
- “(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 and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.”. 15

*Failure to send to registrar particulars of charge on property acquired (Scotland)*

- 25 (1) In subsection (3) of section 416 of the Companies Act 1985 (Scotland: failure to send registrar particulars of charge or issue of debenture) for the words “the company and every officer of it” to the end substitute “an offence is committed by – 20
- (a) the company, and
  - (b) every officer of the company who is in default.”.
- (2) At the end of that section add –
- “(4) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine; 25
  - (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.”.

*Omission of entry from company’s register of charges (Scotland)*

- 26 (1) In subsection (3) of section 422 of the Companies Act 1985 (Scotland: failure to make entry in company’s register of charges) for “he is liable to a fine” substitute “he commits an offence”. 30
- (2) At the end of that section add –
- “(4) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine; 35
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

*Refusal of inspection of charging instrument or of register of charges (Scotland)*

- 27 For section 423(3) of the Companies Act 1985 (Scotland: refusal of inspection



	of charging instrument or register of charges) substitute –	
	“(3) If inspection of the copies or register is refused, an offence is committed by –	
	(a) the company, and	
	(b) every officer of the company who is in default.	5
	(3A) 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.”.	
	<i>Failure to annex to memorandum court order sanctioning compromise or arrangement with creditors</i>	10
28	For section 425(4) of the Companies Act 1985 (c. 6) (failure to annex to company’s constitutional documents copy of court order sanctioning compromise or arrangement with creditors) substitute –	
	“(4) If a company makes default in complying with subsection (3), an offence is committed by –	15
	(a) the company, and	
	(b) every officer of the company who is in default.	
	(4A) 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
	<i>Failure to comply with requirements to inform members and creditors about compromise or arrangement</i>	
29	For subsection (6) of section 426 of the Companies Act 1985 (failure to inform members or creditors in advance of meeting about compromise or arrangement) substitute –	25
	“(6) If a company makes default in complying with any requirement of this section, an offence is committed by –	
	(a) the company, and	
	(b) every officer of the company who is in default.	
	(6A) For the purposes of subsection (6) the following are treated as officers of the company –	30
	(a) a liquidator or administrator of the company, and	
	(b) a trustee of a deed for securing the issue of debentures of the company.	
	(6B) A person is not guilty of an offence under subsection (6) if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his interests.	35
	(6C) A person guilty of an offence under subsection (6) is liable –	
	(a) on conviction on indictment, to a fine;	40
	(b) on summary conviction, to a fine not exceeding the statutory maximum.”.	

*Failure by director or trustee for debenture holders to give information to company*

- 30 (1) In subsection (7) of that section (failure by director or trustee for debenture holders to give information to company) omit “; and any person who makes default in complying with this subsection is liable to a fine”.
- (2) At the end of that section add – 5
- “(8) A person who makes default in complying with subsection (7) commits an offence.
- (9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”. 10

*Failure to deliver to registrar copy of order for company reconstruction or amalgamation*

- 31 (1) In section 427(5) of the Companies Act 1985 (c. 6) (failure to deliver to registrar copy of order for company reconstruction or amalgamation) omit the words “; and if default is made” to the end.
- (2) After that provision insert – 15
- “(5A) If default is made in complying with subsection (5) an offence is committed by –
- (a) the company, and
- (b) every officer of the company who is in default.
- (5B) 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

*Failure to send notice etc relating to buy-out of minority shareholders*

- 32 (1) In subsection (6) of section 429 of the Companies Act 1985 (failure to send notice etc relating to buy-out of minority shareholders) for the words from “shall be liable to imprisonment” to the end substitute “commits an offence.” 25
- (2) After subsection (7) of that section insert –
- “(7A) 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 – 30
- (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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum; 35
- (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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.”. 40

*Failure to give notice of rights to minority shareholder*

- 33 (1) In subsection (6) of section 430A of the Companies Act 1985 (c. 6) (takeovers: failure to give notice of rights to minority shareholder) for the words “shall be liable” to the end substitute “commits an offence.”
- (2) At the end of that section add – 5
- “(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 and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.”. 10

*Failure to give information about interests in shares etc*

- 34 (1) In subsection (3) of section 444 of the Companies Act 1985 (failure to give information requested by Secretary of State relating to interests in shares etc) for “is liable to imprisonment or a fine, or both” substitute “commits an offence”. 15
- (2) At the end of that section add –
- “(4) 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 – 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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum; 25
- (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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.”. 30

*Obstruction of rights conferred by a warrant or failure to comply with requirement under section 448*

- 35 (1) In section 448(7) of the Companies Act 1985 (obstruction of rights conferred by or by virtue of warrant for entry and search of premises) omit the words “and liable to a fine.” to the end. 35
- (2) After that provision insert –
- “(7A) 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

*Wrongful disclosure of information to which section 449 applies*

- 36 (1) Section 449 of the Companies Act 1985 (wrongful disclosure of information obtained in course of company investigation) is amended as follows.

- (2) For subsection (6)(a) and (b) substitute “is guilty of an offence.”
- (3) After subsection (6) insert –
- “(6A) 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); 5
  - (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).” 10
- (4) Omit subsection (7).

*Destruction, mutilation etc of company documents*

- 37 (1) For subsection (3) of section 450 of the Companies Act 1985 (offence of destroying, etc company documents) substitute – 15
- “(3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven 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).” 25
- (2) Omit subsection (4) of that section.

*Provision of false information in purported compliance with section 447*

- 38 (1) For subsection (2) of section 451 of the Companies Act 1985 (c. 6) (provision of false information in response to requirement under section 447) substitute – 30
- “(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);
  - (b) on summary conviction – 35
    - (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).” 40
- (2) Omit subsection (3) of that section.

*Obstruction of inspector, etc exercising power to enter and remain on premises*

- 39 (1) Section 453A of the Companies Act 1985 (c. 6) (obstruction of inspector etc exercising power to enter and remain on premises) is amended as follows.
- (2) For subsection (5)(a) and (b) substitute “is guilty of an offence.”
- (3) After subsection (5) insert – 5
- “(5A) 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.”.
- (4) Omit subsection (6). 10

*Attempted evasion of restrictions under Part 15*

- 40 (1) In subsection (1) of section 455 of the Companies Act 1985 (attempted evasion of restrictions under Part 15) for “is liable to a fine if he” substitute “commits an offence if he”.
- (2) In subsection (2) of that section for the words “the company” to the end substitute “an offence is committed by – 15
- (a) the company, and
- (b) every officer of the company who is in default.”
- (3) After that subsection insert –
- “(2A) A person guilty of an offence under this section is liable – 20
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

*Fraudulent trading*

- 41 (1) Section 458 of the Companies Act 1985 (fraudulent trading) is amended as follows. 25
- (2) Make the existing provision subsection (1).
- (3) For “is liable to imprisonment or a fine, or both” substitute “commits an offence”.
- (4) At the end add – 30
- “(2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine (or both);
- (b) on summary conviction – 35
- (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).”.
- 40

*Failure to register court order in case of unfair prejudice to company members*

- 42 (1) In section 461(5) of the Companies Act 1985 (c. 6) (failure to register court order in case of unfair prejudice to company members) omit the words “; and if a company makes default” to the end.
- (2) After that provision insert – 5
- “(5A) If a company makes default in complying with subsection (5), an offence is committed by –
- (a) the company, and
- (b) every officer of the company who is in default.
- (5B) 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

*Breach of duty etc in connection with application to strike company off register*

- 43 (1) In subsection (1) of section 652E of the Companies Act 1985 (enforcement of duties in connection with application to strike company off register) omit “and liable to a fine”. 15
- (2) In subsection (2) of that section omit “and liable to imprisonment or a fine, or both”.
- (3) At the end of that section add – 20
- “(6) A person guilty of an offence under subsection (1) is liable –
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) A person guilty of an offence under subsection (2) is liable – 25
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven 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); 30
- (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).”.

*Making unauthorised application to strike off company* 35

- 44 (1) In subsection (2) of section 652F of the Companies Act 1985 (making unauthorised application to strike off company) omit “and liable to a fine”.
- (2) At the end of that section add –
- “(3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine; 40
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

SCHEDULE 5

Section 795(1)

DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO A COMPANY

PART 1

INTRODUCTION

*Application of Schedule* 5

- 1 This Schedule does not apply to documents or information sent or supplied by one company to another (see section 795(4) and Schedules 6 and 7).

PART 2

COMMUNICATIONS IN HARD COPY FORM

*Introduction* 10

- 2 A document or information is validly sent or supplied to a company if it is sent or supplied in hard copy form in accordance with this Part of this Schedule.

*Method of communication in hard copy form*

- 3 (1) A document or information in hard copy form may be sent or supplied by hand or by post to an address (in accordance with paragraph 4). 15
- (2) For the purposes of this Schedule, a person sends a document or information by post if he prepays and posts an envelope containing the document or information.

*Address for communications in hard copy form* 20

- 4 A document or information in hard copy form may be sent or supplied –
- (a) to an address specified by the company for the purpose;
  - (b) to the company's registered office;
  - (c) to an address to which any provision of the Companies Acts authorises the document or information to be sent or supplied. 25

PART 3

COMMUNICATIONS IN ELECTRONIC FORM

*Introduction*

- 5 (1) A document or information is validly sent or supplied to a company if it is sent or supplied in electronic form in accordance with this Part of this Schedule. 30
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

*Conditions for use of communications in electronic form*

- 6 A document or information may only be sent or supplied to a company in an electronic form if –
- (a) the company has agreed (generally or specifically) that the document or information may be sent or supplied in that form (and has not revoked that agreement), or 5
  - (b) the company is deemed to have so agreed by a provision in the Companies Acts.

*Address for communications in electronic form*

- 7 (1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied in electronic form to an address – 10
- (a) specified for the purpose by the company (generally or specifically), or
  - (b) deemed by a provision in the Companies Acts to have been so specified. 15
- (2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be sent or supplied to an address to which it could be validly sent if it were in hard copy form.

PART 4

OTHER AGREED FORMS OF COMMUNICATION 20

- 8 (1) A document or information that is sent or supplied to a company otherwise than in hard copy form or electronic form is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the company.
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts. 25

SCHEDULE 6

Section 795(2)

COMMUNICATIONS BY A COMPANY OTHER THAN A TRADED COMPANY

PART 1

INTRODUCTION

*Application of this Schedule* 30

- 1 This Schedule applies to documents or information sent or supplied by companies that are not traded companies.



PART 2

COMMUNICATIONS IN HARD COPY FORM

*Introduction*

- 2 A document or information is validly sent or supplied by a company if it is sent or supplied in hard copy form in accordance with this Part of this Schedule. 5

*Method of communication in hard copy form*

- 3 (1) A document or information in hard copy form must be—  
 (a) handed to the intended recipient, or  
 (b) sent or supplied by hand or by post to an address (in accordance with paragraph 4). 10
- (2) For the purposes of this Schedule, a person sends a document or information by post if he prepays and posts an envelope containing the document or information.

*Address for communications in hard copy form* 15

- 4 (1) A document or information in hard copy form may be sent or supplied by the company—  
 (a) to an address specified for the purpose by the intended recipient;  
 (b) to a company at its registered office;  
 (c) to a person in his capacity as a member of the company at his address as shown in the company's register of members; 20  
 (d) to a person in his capacity as a director of the company at his address as shown in the company's register of directors;  
 (e) to an address to which any provision of the Companies Acts authorises the document or information to be sent or supplied. 25
- (2) Where the company is unable to obtain an address falling within subparagraph (1), the document or information may be sent or supplied to the intended recipient's last address known to the company.

PART 3

COMMUNICATIONS IN ELECTRONIC FORM 30

*Introduction*

- 5 (1) A document or information is validly sent or supplied by a company if it is sent in electronic form in accordance with this Part of this Schedule.
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts. 35

*Agreement to communications in electronic form*

- 6 A document or information may only be sent or supplied by a company in electronic form—

- (a) to a person who has agreed (generally or specifically) that the document or information may be sent or supplied in that form (and has not revoked that agreement), or
- (b) to a company that is deemed to have so agreed by a provision in the Companies Acts.

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*Address for communications in electronic form*

- 7 (1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address –
- (a) specified for the purpose by the intended recipient (generally or specifically), or
  - (b) where the intended recipient is a company, deemed by a provision of the Companies Acts to have been so specified.
- (2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be –
- (a) handed to the intended recipient, or
  - (b) sent or supplied to an address to which it could be validly sent if it were in hard copy form.

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PART 4

COMMUNICATIONS BY MEANS OF A WEBSITE

*Use of website*

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- 8 (1) A document or information is validly sent or supplied by a company if it is made available on a website in accordance with this Part of this Schedule.
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

*Agreement to use of website*

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- 9 A document or information may only be sent or supplied by the company to a person by being made available on a website if the person –
- (a) has agreed (generally or specifically) that the document or information may be sent or supplied to him in that manner, or
  - (b) is taken to have so agreed under –
- (i) paragraph 10 (members of the company etc), or
  - (ii) paragraph 11 (debenture holders),
- and has not revoked that agreement.

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*Deemed agreement of members of company etc to use of website*

- 10 (1) This paragraph applies to a document or information to be sent or supplied to a person –
- (a) as a member of the company, or
  - (b) as a person identified by a member (in accordance with the company’s articles or regulations made under section 137) as entitled to enjoy or exercise all or any specified rights of the member in relation to the company (an “entitled person”).

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- (2) To the extent that –
- (a) the members of the company have resolved that the company may send or supply documents or information to members by making them available on a website, or
  - (b) the company’s articles contain provision to that effect, 5
- a member of the company or entitled person in relation to whom the following conditions are met is taken to have agreed that the company may send or supply documents or information to him in that manner.
- (3) The conditions are that –
- (a) the member or entitled person has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him by means of a website, and 10
  - (b) the company has not received a response within the period of 28 days beginning with the date on which the company’s request was sent. 15
- (4) A member or entitled person is not taken to have so agreed if the company’s request –
- (a) did not state clearly what the effect of a failure to respond would be, or 20
  - (b) was sent less than twelve months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information.
- (5) A resolution under this paragraph is subject to Chapter 3 of Part 3 of this Act (resolutions affecting company’s constitution). 25

*Deemed agreement of debenture holders to use of website*

- 11 (1) This paragraph applies to a document or information to be sent or supplied to a person as holder of a company’s debentures.
- (2) To the extent that –
- (a) the relevant debenture holders have duly resolved that the company may send or supply documents or information to them by making them available on a website, or 30
  - (b) the instrument creating the debenture in question contains provision to that effect,
- a debenture holder in relation to whom the following conditions are met is taken to have agreed that the company may send or supply documents or information to him in that manner. 35
- (3) The conditions are that –
- (a) the debenture holder has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him by means of a website, and 40
  - (b) the company has not received a response within the period of 28 days beginning with the date on which the company’s request was sent. 45
- (4) A person is not taken to have so agreed if the company’s request –

- (a) did not state clearly what the effect of a failure to respond would be, or
  - (b) was sent less than twelve months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information. 5
- (5) For the purposes of this paragraph –
  - (a) the relevant debenture holders are the holders of debentures of the company ranking *pari passu* for all purposes with the intended recipient, and
  - (b) a resolution of the relevant debenture holders is duly passed if they agree in accordance with the provisions of the instruments creating the debentures. 10

*Availability of document or information*

- 12 (1) A document or information authorised or required to be sent or supplied by means of a website must be made available in a form, and by a means, that the company reasonably considers will enable the recipient –
  - (a) to read it, and
  - (b) to retain a copy of it. 15
- (2) For this purpose a document or information can be read only if –
  - (a) it can be read with the naked eye, or
  - (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye. 20

*Notification of availability*

- 13 (1) The company must notify the intended recipient of –
  - (a) the presence of the document or information on the website,
  - (b) the address of the website,
  - (c) the place on the website where it may be accessed, and
  - (d) how to access the document or information. 25
- (2) The document or information is taken to be sent –
  - (a) on the date on which the notification required by this paragraph is sent, or
  - (b) if later, the date on which the document or information first appears on the website after that notification is sent. 30

*Period of availability on website*

- 14 (1) The company must make the document or information available on the website throughout –
  - (a) the period specified by any applicable provision of the Companies Acts, or
  - (b) if no such period is specified, the period of 28 days beginning with the date on which the notification required under paragraph 13 is sent to the person in question. 40
- (2) For the purposes of this paragraph, a failure to make a document or information available on a website throughout the period mentioned in sub-paragraph (1) shall be disregarded if –

- (a) it is made available on the website for part of that period, and
- (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

PART 5

5

OTHER AGREED FORMS OF COMMUNICATION

- 15 (1) A document or information that is sent or supplied otherwise than in hard copy or electronic form or by means of a website is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient. 10
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

PART 6

SUPPLEMENTARY PROVISIONS

*Joint holders of shares or debentures* 15

- 16 (1) This paragraph applies in relation to documents or information to be sent or supplied to joint holders of shares or debentures of a company.
- (2) Anything to be agreed or specified by the holder must be agreed or specified by all the joint holders.
- (3) Anything authorised or required to be sent or supplied to the holder may be sent or supplied either – 20
- (a) to each of the joint holders, or
  - (b) to the holder whose name appears first in the register of members or the relevant register of debenture holders.
- (4) This paragraph has effect subject to anything in the company’s articles. 25

*Death or bankruptcy of holder of shares*

- 17 (1) This paragraph has effect in the case of the death or bankruptcy of a holder of a company’s shares.
- (2) Documents or information required or authorised to be sent or supplied to the member may be sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy – 30
- (a) by name, or
  - (b) by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description,
- at the address in the United Kingdom supplied for the purpose by those so claiming. 35
- (3) Until such an address has been so supplied, a document or information may be sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.
- (4) This paragraph has effect subject to anything in the company’s articles. 40

- (5) References in this paragraph to the bankruptcy of a person include—
- (a) the sequestration of the estate of a person;
  - (b) a person’s estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)).

In such a case the reference in sub-paragraph (2)(b) to the trustee of the bankrupt is to be read as the permanent or interim trustee (within the meaning of that Act) on the sequestrated estate or, as the case may be, the trustee under the protected deed. 5

## SCHEDULE 7

795(2)

### COMMUNICATIONS BY A TRADED COMPANY

10

#### PART 1

#### INTRODUCTION

##### *Application of this Schedule*

- 1 This Schedule applies to documents or information sent or supplied by traded companies. 15

#### PART 2

### COMMUNICATIONS IN HARD COPY FORM

##### *Introduction*

- 2 A document or information is validly sent or supplied by a traded company if it is sent or supplied in hard copy form in accordance with this Part of this Schedule. 20

##### *Method of communication in hard copy form*

- 3 (1) A document or information in hard copy form must be—
- (a) handed to the intended recipient, or
  - (b) sent or supplied by hand or by post to an address (in accordance with paragraph 4).
- (2) For the purposes of this Schedule, a person sends a document or information by post if he prepays and posts an envelope containing the document or information. 25

##### *Address for communications in hard copy form*

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- 4 (1) Documents or information in hard copy form may be sent or supplied by the traded company—
- (a) to an address specified for the purpose by the intended recipient;
  - (b) to a company at its registered office;
  - (c) to a person in his capacity as a member of the company at his address as shown in the company’s register of members; 35

- (d) to a person in his capacity as a director of the company at his address as shown in the company's register of directors;
  - (e) to an address to which any provision of the Companies Acts authorises the document or information to be sent or supplied.
- (2) Where the traded company is unable to obtain an address falling within subparagraph (1), the documents or information may be sent or supplied to the intended recipient's last address known to the company. 5

### PART 3

#### COMMUNICATIONS IN ELECTRONIC FORM

##### *Introduction* 10

- 5 (1) A document or information is validly sent or supplied by a traded company if it is sent in electronic form in accordance with this Part of this Schedule.
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

##### *Agreement to communications in electronic form* 15

- 6 (1) A document or information may only be sent or supplied by a traded company in electronic form –
- (a) to a person who has agreed (generally or specifically) that the document or information may be sent or supplied in that form (and has not revoked that agreement), or 20
  - (b) to a company that is deemed to have so agreed by a provision in the Companies Acts.
- (2) A document or information may not be sent or supplied by a traded company in electronic form to –
- (a) a member of the company, 25
  - (b) a person identified by a member (in accordance with the company's articles or regulations made under section 137) as entitled to enjoy or exercise all or any specified rights of the member in relation to the company, or
  - (c) a holder of debt securities of the company, 30
- except in accordance with paragraph 7 or 8 (resolution required before documents and information sent or supplied in electronic form).

##### *Resolution required for communications in electronic form with members of traded company etc*

- 7 (1) This paragraph applies to documents or information to be sent or supplied to a person –
- (a) as a member of a traded company, or
  - (b) as a person identified by a member (in accordance with the company's articles or regulations made under section 137) as entitled to enjoy or exercise all or any specified rights of the member in relation to the company. 40
- (2) The company may only send or supply such documents or information in electronic form if –

- (a) the members of the company have resolved that it may do so, or
  - (b) the company’s articles contain provision to that effect.
- (3) A resolution under this paragraph is subject to Chapter 3 of Part 3 of this Act (resolutions affecting company’s constitution).

*Resolution required for communications in electronic form with holders of debt securities* 5

- 8 (1) This paragraph applies to documents or information to be sent or supplied to a person as a holder of debt securities of a traded company.
- (2) The company may only send or supply such documents or information in electronic form if –
- (a) the relevant holders of debt securities have duly resolved that it may do so, or 10
  - (b) the instrument creating the debt securities in question contains provision to that effect.
- (3) For the purposes of this paragraph –
- (a) the relevant holders of debt securities are the holders of debt securities of the company ranking *pari passu* for all purposes with the intended recipient, and 15
  - (b) a resolution of the relevant holders of debt securities is duly passed if they agree in accordance with the provisions of the instruments creating the debt securities. 20
- (4) In this Part of this Schedule, “debt securities” means bonds or other forms of transferable securitised debts, with the exception of securities –
- (a) that are equivalent to shares in companies, or
  - (b) that if converted, or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares. 25

*Address for communications in electronic form*

- 9 (1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address –
- (a) specified for the purpose by the intended recipient (generally or specifically), or 30
  - (b) where the intended recipient is a company, deemed by a provision of the Companies Acts to have been so specified.
- (2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be –
- (a) handed to the intended recipient, or 35
  - (b) sent or supplied to an address to which it could be validly sent if it were in hard copy form.



PART 4

COMMUNICATIONS BY MEANS OF A WEBSITE

*Use of website*

- 10 (1) A document or information is validly sent or supplied by a traded company if it is made available on a website in accordance with this Part of this Schedule. 5
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

*Use of website to communicate with members of traded company etc*

- 11 (1) This paragraph applies to a document or information to be sent or supplied by a traded company to a person – 10
- (a) as a member of the company, or
- (b) as a person identified by a member (in accordance with the company’s articles or regulations made under section 137) as entitled to enjoy or exercise all or any specified rights of the member in relation to the company (an “entitled person”). 15
- (2) The company may only send or supply such documents or information by making them available on a website if –
- (a) the members of the company have resolved that it may do so, or
- (b) the company’s articles contain provision to that effect. 20
- (3) The traded company may only send or supply such documents or information in that manner to members or entitled persons who –
- (a) have agreed that the company may send or supply documents or information generally, or the documents or information in question, to them in that manner, or 25
- (b) are taken to have so agreed under the following provisions, and have not revoked that agreement.
- (4) A person is taken to have so agreed if –
- (a) he has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him in that manner, and 30
- (b) the company has not received a response within the period of 28 days beginning with the date on which the company’s request was sent. 35
- (5) A person is not taken to have so agreed if the company’s request –
- (a) did not state clearly what the effect of a failure to respond would be, or
- (b) was sent less than twelve months after a previous request made to him in respect of the same or a similar class of documents or information. 40
- (6) A resolution under this paragraph is subject to Chapter 3 of Part 3 of this Act (resolutions affecting company’s constitution).

*Use of website to communicate with holders of debt securities*

- 12 (1) This paragraph applies to a document or information to be sent or supplied by a traded company to a person as a holder of debt securities of the company.
- (2) The company may only send or supply such documents or information by making them available on a website if – 5
- (a) the relevant holders of debt securities have duly resolved that it may do so, or
  - (b) the instrument creating the debt securities in question contains provision to that effect. 10
- (3) The traded company may only send or supply such documents in that manner to holders of debt securities who –
- (a) have agreed that the company may send or supply documents or information generally, or the documents or information in question, to them in that manner, or 15
  - (b) are taken to have so agreed under the following provisions, and have not revoked that agreement.
- (4) A person is taken to have so agreed if –
- (a) he has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him in that manner, and 20
  - (b) the company has not received a response within the period of 28 days beginning with the date on which the company’s request was sent. 25
- (5) A person is not taken to have so agreed if the company’s request –
- (a) did not state clearly what the effect of a failure to respond would be, or
  - (b) was sent less than twelve months after any previous request made to him in respect of the same or a similar class of documents or information. 30
- (6) For the purposes of this paragraph –
- (a) the relevant holders of debt securities are the holders of debt securities of the company ranking *pari passu* for all purposes with the intended recipient, and 35
  - (b) a resolution of the relevant holders of debt securities is duly passed if they agree in accordance with the provisions of the instruments creating the debt securities.
- (7) In this Part of this Schedule, “debt securities” means bonds or other forms of transferable securitised debts, with the exception of securities – 40
- (a) that are equivalent to shares in companies, or
  - (b) that if converted, or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares.

*Use of website to communicate with other debenture holders*

- 13 (1) A document or information may only be sent or supplied by the company to a person as a holder of debentures of the company (other than debt securities) by being made available on a website if the person –
- (a) has agreed (generally or specifically) that the document or information may be sent or supplied to him in that manner, or 5
  - (b) is taken to have so agreed under this paragraph, and has not revoked that agreement.
- (2) To the extent that –
- (a) the relevant debenture holders have duly resolved that the company may send or supply documents or information to them by making them available on a website, or 10
  - (b) the instrument creating the debenture in question contains provision to that effect,
- a debenture holder in relation to whom the following conditions are met is taken to have agreed that documents or information may be sent or supplied to him by the company in that manner. 15
- (3) The conditions are that –
- (a) the debenture holder has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him by means of a website, and 20
  - (b) the company has not received a response within the period of 28 days beginning with the date on which the company’s request was sent. 25
- (4) A person is not taken to have so agreed if the company’s request –
- (a) did not state clearly what the effect of a failure to respond would be, or
  - (b) was sent less than twelve months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information. 30
- (5) For the purposes of this paragraph –
- (a) the relevant debenture holders are the holders of debentures of the company (other than debt securities) ranking *pari passu* for all purposes with the intended recipient, and 35
  - (b) a resolution of the relevant debenture holders is duly passed if they agree in accordance with the provisions of the instruments creating the debentures.

*Use of website to communicate with other persons*

- 14 A document or information may only be sent or supplied by a traded company to a person who is not – 40
- (a) a member of the company or an entitled person, or
  - (b) a holder of debentures of the company,
- by being made available on a website if the person has agreed (generally or specifically) that the document or information may be sent or supplied to him in that manner (and has not revoked that agreement). 45

*Availability of document or information*

- 15 (1) A document or information authorised or required to be sent or supplied by means of a website must be made available in a form, and by a means, that the company reasonably considers will enable the recipient –
- (a) to read it, and 5
  - (b) to retain a copy of it.
- (2) For this purpose a document or information can be read only if –
- (a) it can be read with the naked eye, or
  - (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye. 10

*Notification of availability*

- 16 (1) The traded company must notify the intended recipient of –
- (a) the presence of the document or information on the website,
  - (b) the address of the website,
  - (c) the place on the website where it may be accessed, and 15
  - (d) how to access the document or information.
- (2) The document or information is taken to be sent –
- (a) on the date on which the notification required by this paragraph is sent, or
  - (b) if later, the date on which the document or information first appears 20  
on the website after that notification is sent.

*Period of availability on website*

- 17 (1) The traded company must make the document or information available on the website throughout –
- (a) the period specified by any applicable provision of the Companies Acts, or 25
  - (b) if no such period is specified, the period of 28 days beginning with the date on which the notification required under paragraph 16 is sent to the person in question.
- (2) For the purposes of this paragraph, a failure to make a document or information available on a website throughout the period mentioned in subparagraph (1) shall be disregarded if –
- (a) it is made available on the website for part of that period, and
  - (b) the failure to make it available throughout that period is wholly 30  
attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid. 35

PART 5

OTHER AGREED FORMS OF COMMUNICATION

- 18 (1) A document or information that is sent or supplied otherwise than in hard copy or electronic form or by means of a website is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient. 40

- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

## PART 6

### SUPPLEMENTARY PROVISIONS

<i>Joint holders of shares or debentures</i>	5
<p>19 (1) This paragraph applies in relation to documents or information to be sent or supplied to joint holders of shares or debentures of a company.</p> <p>(2) Anything to be agreed or specified by the holder must be agreed or specified by all the joint holders.</p> <p>(3) Anything authorised or required to be sent or supplied to the holder may be sent or supplied either –</p> <p style="padding-left: 20px;">(a) to each of the joint holders, or</p> <p style="padding-left: 20px;">(b) to the holder whose name appears first in the register of members or the relevant register of debenture holders.</p> <p>(4) This paragraph has effect subject to anything in the company’s articles.</p>	<p>10</p> <p>15</p>
<i>Death or bankruptcy of holder of shares</i>	
<p>20 (1) This paragraph has effect in the case of the death or bankruptcy of a holder of a traded company’s shares.</p> <p>(2) Documents or information required or authorised to be sent or supplied to the member may be sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy –</p> <p style="padding-left: 20px;">(a) by name, or</p> <p style="padding-left: 20px;">(b) by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description,</p> <p>at the address in the United Kingdom supplied for the purpose by those so claiming.</p> <p>(3) Until such an address has been so supplied, a document or information may be sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.</p> <p>(4) This paragraph has effect subject to anything in the company’s articles.</p> <p>(5) References in this paragraph to the bankruptcy of a person include –</p> <p style="padding-left: 20px;">(a) the sequestration of the estate of a person;</p> <p style="padding-left: 20px;">(b) a person’s estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)).</p> <p>In such a case the reference in sub-paragraph (2)(b) to the trustee of the bankrupt is to be read as the permanent or interim trustee (within the meaning of that Act) on the sequestrated estate or, as the case may be, the trustee under the protected deed.</p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p>

SCHEDULE 8

Section 806

PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTARY PROVISIONS

*Introduction*

- 1 The provisions of this Schedule explain expressions used in section 806 (parent and subsidiary undertakings) and otherwise supplement that section. 5

*Voting rights in an undertaking*

- 2 (1) In section 806(2)(a) and (d) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters. 10
- (2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution. 15

*Right to appoint or remove a majority of the directors*

- 3 (1) In section 806(2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters. 20
- (2) An undertaking shall be treated as having the right to appoint to a directorship if— 25
- (a) a person's appointment to it follows necessarily from his appointment as director of the undertaking, or
  - (b) the directorship is held by the undertaking itself.
- (3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship. 30

*Right to exercise dominant influence*

- 4 (1) For the purposes of section 806(2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking. 35
- (2) A “control contract” means a contract in writing conferring such a right which— 40
- (a) is of a kind authorised by the articles of the undertaking in relation to which the right is exercisable, and

(b) is permitted by the law under which that undertaking is established.

(3) This paragraph shall not be read as affecting the construction of section 806(4)(a).

*Rights exercisable only in certain circumstances or temporarily incapable of exercise*

- 5 (1) Rights which are exercisable only in certain circumstances shall be taken into account only – 5
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
- (b) when the circumstances are within the control of the person having the rights. 10
- (2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

*Rights held by one person on behalf of another*

- 6 Rights held by a person in a fiduciary capacity shall be treated as not held by him. 15
- 7 (1) Rights held by a person as nominee for another shall be treated as held by the other.
- (2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

*Rights attached to shares held by way of security* 20

- 8 Rights attached to shares held by way of security shall be treated as held by the person providing the security –
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions, and 25
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

*Rights attributed to parent undertaking* 30

- 9 (1) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.
- (2) Nothing in paragraph 7 or 8 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings. 35
- (3) For the purposes of paragraph 8 rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

*Disregard of certain rights*

- 10 The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

*Supplementary*

- 11 References in any provision of paragraphs 6 to 10 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him. 5

SCHEDULE 9

Section 814

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In this table “the 1985 Act” means the Companies Act 1985 (c. 6).

SCHEDULE 10

Section 846

RECOGNISED SUPERVISORY BODIES

PART 1

GRANT AND REVOCATION OF RECOGNITION OF A SUPERVISORY BODY 5

*Application for recognition of supervisory body*

- 1 (1) A supervisory body may apply to the Secretary of State for an order declaring it to be a recognised supervisory body for the purposes of this Part of this Act (“a recognition order”).
- (2) Any such application must be – 10
- (a) made in such manner as the Secretary of State may direct, and
- (b) accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information. 15
- (4) The directions and requirements given or imposed under sub-paragraphs (2) and (3) may differ as between different applications.
- (5) The Secretary of State may require any information to be furnished under this paragraph to be in such form or verified in such manner as he may specify. 20
- (6) Every application must be accompanied by –
- (a) a copy of the applicant’s rules, and
- (b) a copy of any guidance issued by the applicant in writing.
- (7) The reference in sub-paragraph (6)(b) to guidance issued by the applicant is a reference to any guidance or recommendation – 25
- (a) issued or made by it to all or any class of its members or persons seeking to become members,
- (b) relevant for the purposes of this Part, and
- (c) intended to have continuing effect, 30
- including any guidance or recommendation relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.

*Grant and refusal of recognition*

- 2 (1) The Secretary of State may, on an application duly made in accordance with paragraph 1 and after being furnished with all such information as he may require under that paragraph, make or refuse to make a recognition order in respect of the applicant. 35

- (2) The Secretary of State may make a recognition order only if it appears to him, from the information furnished by the body and having regard to any other information in his possession, that the requirements of Part 2 of this Schedule are satisfied in the case of that body.
- (3) The Secretary of State may refuse to make a recognition order in respect of a body if he considers that its recognition is unnecessary having regard to the existence of one or more other bodies which –
- (a) maintain and enforce rules as to the appointment and conduct of statutory auditors, and
  - (b) have been or are likely to be recognised.
- (4) Where the Secretary of State refuses an application for a recognition order he must give the applicant a written notice to that effect –
- (a) specifying which requirements, in the opinion of the Secretary of State, are not satisfied, or
  - (b) stating that the application is refused on the ground mentioned in sub-paragraph (3).
- (5) A recognition order must state the date on which it takes effect.

#### *Revocation of recognition*

- 3 (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him –
- (a) that any requirement of Part 2 of this Schedule is not satisfied in the case of the body to which the recognition order relates (“the recognised body”),
  - (b) that the body has failed to comply with any obligation imposed on it by or by virtue of this Part of this Act, or
  - (c) that the continued recognition of the body is undesirable having regard to the existence of one or more other bodies which have been or are to be recognised.
- (2) An order revoking a recognition order must state the date on which it takes effect, which must be after the period of three months beginning with the date on which the revocation order is made.
- (3) Before revoking a recognition order the Secretary of State must –
- (a) give written notice of his intention to do so to the recognised body,
  - (b) take such steps as he considers reasonably practicable for bringing the notice to the attention of the members of the body, and
  - (c) publish the notice in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.
- (4) A notice under sub-paragraph (3) must –
- (a) state the reasons for which the Secretary of State proposes to act, and
  - (b) give particulars of the rights conferred by sub-paragraph (5).
- (5) A person within sub-paragraph (6) may, within the period of three months beginning with the date of service or publication of the notice under sub-paragraph (3) or such longer period as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral

representations to a person appointed for that purpose by the Secretary of State.

- (6) The persons within this sub-paragraph are –
- (a) the recognised body on which a notice is served under sub-paragraph (3), 5
  - (b) any member of the body, and
  - (c) any other person who appears to the Secretary of State to be affected.
- (7) The Secretary of State must have regard to any representations made in accordance with sub-paragraph (5) in determining whether to revoke the recognition order. 10
- (8) If in any case the Secretary of State considers it essential to do so in the public interest he may revoke a recognition order without regard to the restriction imposed by sub-paragraph (2), even if –
- (a) no notice has been given or published under sub-paragraph (3), or
  - (b) the period of time for making representations in pursuance of such a notice has not expired. 15
- (9) An order revoking a recognition order may contain such transitional provision as the Secretary of State thinks necessary or expedient.
- (10) A recognition order may be revoked at the request or with the consent of the recognised body and any such revocation is not subject to – 20
- (a) the restrictions imposed by sub-paragraphs (1) and (2), or
  - (b) the requirements of sub-paragraphs (3) to (5) and (7).
- (11) On making an order revoking a recognition order in respect of a body the Secretary of State must –
- (a) give written notice of the making of the order to the body, 25
  - (b) take such steps as he considers reasonably practicable for bringing the making of the order to the attention of the members of the body, and
  - (c) publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected. 30

*Transitional provision*

- 4 A recognition order made and not revoked under –
- (a) paragraph 2(1) of Schedule 11 to the Companies Act 1989 (c. 40), or
  - (b) paragraph 2(1) of Schedule 11 to the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)), 35
- before the commencement of this Chapter of this Part of this Act is to have effect after the commencement of this Chapter as a recognition order made under paragraph 2(1) of this Schedule.

*Orders not statutory instruments* 40

- 5 Orders under this Part of this Schedule shall not be made by statutory instrument.

PART 2

REQUIREMENTS FOR RECOGNITION OF A SUPERVISORY BODY

*Holding of appropriate qualification*

- 6 (1) The body must have rules to the effect that a person is not eligible for appointment as a statutory auditor unless – 5
- (a) in the case of an individual, he holds an appropriate qualification,
  - (b) in the case of a firm –
    - (i) each individual responsible for statutory audit work on behalf of the firm is eligible for appointment as a statutory auditor, and 10
    - (ii) the firm is controlled by qualified persons (see paragraph 7 below).
- (2) Sub-paragraph (1) does not prevent the body from imposing more stringent requirements.
- (3) A firm which has ceased to comply with the conditions mentioned in sub-paragraph (1)(b) may be permitted to remain eligible for appointment as a statutory auditor for a period of not more than three months. 15
- 7 (1) This paragraph explains what is meant in paragraph 6(1)(b) by a firm being “controlled by qualified persons”.
- (2) In this paragraph references to a person being qualified are – 20
- (a) in relation to an individual, to his holding –
    - (i) an appropriate qualification, or
    - (ii) a corresponding qualification to audit accounts under the law of a member State, or part of a member State, other than the United Kingdom; 25
  - (b) in relation to a firm, to its –
    - (i) being eligible for appointment as a statutory auditor, or
    - (ii) being eligible for a corresponding appointment as an auditor under the law of a member State, or part of a member State, other than the United Kingdom. 30
- (3) A firm is to be treated as controlled by qualified persons if, and only if –
- (a) a majority of the members of the firm are qualified persons, and
  - (b) where the firm’s affairs are managed by a board of directors, committee or other management body, a majority of that body are qualified persons or, if the body consists of two persons only, at least one of them is a qualified person. 35
- (4) A majority of the members of a firm means –
- (a) where under the firm’s constitution matters are decided upon by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters; 40
  - (b) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
- (5) A majority of the members of the management body of a firm means –

- (a) where matters are decided at meetings of the management body by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters at such meetings;
  - (b) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution. 5
- (6) Paragraphs 5 to 11 of Schedule 8 to this Act (rights to be taken into account and attribution of rights) apply for the purposes of this paragraph.

*Auditors to be fit and proper persons*

- 8 (1) The body must have adequate rules and practices designed to ensure that the persons eligible under its rules for appointment as a statutory auditor are fit and proper persons to be so appointed. 10
- (2) The matters which the body may take into account for this purpose in relation to a person must include—
- (a) any matter relating to any person who is or will be employed by or associated with him for the purposes of or in connection with statutory audit work; 15
  - (b) in the case of a body corporate, any matter relating to—
    - (i) any director or controller of the body,
    - (ii) any other body corporate in the same group, or 20
    - (iii) any director or controller of any such other body; and
  - (c) in the case of a partnership, any matter relating to—
    - (i) any of the partners,
    - (ii) any director or controller of any of the partners,
    - (iii) any body corporate in the same group as any of the partners, 25
    - or
    - (iv) any director or controller of any such other body.
- (3) Where the person is a limited liability partnership, in sub-paragraph (2)(b) “director” is to be read as “member”.
- (4) In sub-paragraph (2)(b) and (c) “controller”, in relation to a body corporate, means a person who either alone or with an associate or associates is entitled to exercise or control the exercise of 15% or more of the rights to vote on all, or substantially all, matters at general meetings of the body or another body corporate of which it is a subsidiary. 30

*Professional integrity and independence*

- 9 (1) The body must have adequate rules and practices designed to ensure that—
- (a) statutory audit work is conducted properly and with integrity, and
  - (b) persons are not appointed as statutory auditors in circumstances in which they have an interest likely to conflict with the proper conduct of the audit. 40
- (2) The body must participate in arrangements within paragraph 21, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.

- (3) The body must also have adequate rules and practices designed to ensure that no firm is eligible under its rules for appointment as a statutory auditor unless the firm has arrangements to prevent a person to whom sub-paragraph (4) applies from being able to exert any influence over the way in which a statutory audit is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit. 5
- (4) This sub-paragraph applies to –
- (a) any individual who is not a qualified person within the meaning of paragraph 7, and
  - (b) any person who is not a member of the firm. 10

*Technical standards*

- 10 (1) The body must have rules and practices as to –
- (a) the technical standards to be applied in statutory audit work, and
  - (b) the manner in which those standards are to be applied in practice.
- (2) The body must participate in arrangements within paragraph 22, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements. 15

*Procedures for maintaining competence*

- 11 The body must have rules and practices designed to ensure that persons eligible under its rules for appointment as a statutory auditor continue to maintain an appropriate level of competence in the conduct of statutory audits. 20

*Monitoring and enforcement*

- 12 (1) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules. 25
- (2) The arrangements for monitoring may make provision for that function to be performed on behalf of the body (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

*Independent monitoring of audits of listed companies and other major bodies* 30

- 13 (1) The body must –
- (a) participate in arrangements within paragraph 23(1), and
  - (b) have rules designed to ensure that members of the body who perform any statutory audit functions in respect of major audits take such steps as may be reasonably required of them to enable their performance of any such functions to be monitored by means of inspections carried out under the arrangements. 35
- (2) Any monitoring of such persons under the arrangements is to be regarded (so far as their performance of statutory audit functions in respect of major audits is concerned) as monitoring of compliance with the body’s rules for the purposes of paragraph 12(1). 40
- (3) In this paragraph –  
“major audit” means a statutory audit conducted in respect of –



- (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c. 8)), or
  - (b) any other person in whose financial condition there is a major public interest; 5
- “statutory audit function” means any function performed as a statutory auditor.

*Membership, eligibility and discipline*

- 14 The rules and practices of the body relating to – 10
- (a) the admission and expulsion of members,
  - (b) the grant and withdrawal of eligibility for appointment as a statutory auditor, and
  - (c) the discipline it exercises over its members,
- must be fair and reasonable and include adequate provision for appeals.

*Investigation of complaints* 15

- 15 (1) The body must have effective arrangements for the investigation of complaints against –
- (a) persons who are eligible under its rules for appointment as a statutory auditor, and
  - (b) the body in respect of matters arising out of its functions as a supervisory body. 20
- (2) The arrangements mentioned in sub-paragraph (1) may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the body itself.

*Independent investigation for disciplinary purposes of public interest cases* 25

- 16 (1) The body must –
- (a) participate in arrangements within paragraph 24(1), and
  - (b) have rules and practices designed to ensure that, where the designated persons have decided that any particular disciplinary action should be taken against a member of the body following the conclusion of an investigation under such arrangements, that decision is to be treated as if it were a decision made by the body in disciplinary proceedings against the member. 30
- (2) In sub-paragraph (1) “the designated persons” means the persons who, under the arrangements, have the function of deciding whether (and if so, what) disciplinary action should be taken against a member of the body in the light of an investigation carried out under the arrangements. 35

*Meeting of claims arising out of audit work*

- 17 (1) The body must have adequate rules or arrangements designed to ensure that persons eligible under its rules for appointment as a statutory auditor take such steps as may reasonably be expected of them to secure that they are able to meet claims against them arising out of statutory audit work. 40

- (2) This may be achieved by professional indemnity insurance or other appropriate arrangements.

*Register of auditors and other information to be made available*

- 18 The body must have rules requiring persons eligible under its rules for appointment as a statutory auditor to comply with any obligations imposed on them by – 5
- (a) requirements under section 853 (Secretary of State’s power to call for information);
  - (b) regulations under section 868 (the register of auditors);
  - (c) regulations under section 869 (information to be made available to the public). 10

*Taking account of costs of compliance*

- 19 The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject. 15

*Promotion and maintenance of standards*

- 20 The body must be able and willing –
- (a) to promote and maintain high standards of integrity in the conduct of statutory audit work, and
  - (b) to co-operate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility in the United Kingdom for the qualification, supervision or regulation of auditors. 20

PART 3

ARRANGEMENTS IN WHICH RECOGNISED SUPERVISORY BODIES ARE REQUIRED TO PARTICIPATE 25

*Arrangements for setting standards relating to professional integrity and independence*

- 21 The arrangements referred to in paragraph 9(2) are appropriate arrangements –
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 9(1), and 30
  - (b) for ensuring that the determination of those standards is done independently of the body.

*Arrangements for setting technical standards*

- 22 The arrangements referred to in paragraph 10(2) are appropriate arrangements –
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 10(1), and
  - (b) for ensuring that the determination of those standards is done independently of the body. 40

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

- 23 (1) The arrangements referred to in paragraph 13(1) are appropriate arrangements –
- (a) for enabling the performance by members of the body of statutory audit functions in respect of major audits to be monitored by means of inspections carried out under the arrangements, and 5
  - (b) for ensuring that the carrying out of such monitoring and inspections is done independently of the body.
- (2) In this paragraph “major audit” and “statutory audit function” have the same meaning as in paragraph 13. 10

*Arrangements for independent investigation for disciplinary purposes of public interest cases*

- 24 (1) The arrangements referred to in paragraph 16(1) are appropriate arrangements –
- (a) for the carrying out of investigations into public interest cases arising in connection with the performance of statutory audit functions by members of the body, 15
  - (b) for the holding of disciplinary hearings relating to members of the body which appear to be desirable following the conclusion of such investigations,
  - (c) for requiring such hearings to be held in public except where the interests of justice otherwise require, 20
  - (d) for the persons before whom such hearings have taken place to decide whether (and, if so, what) disciplinary action should be taken against the members to whom the hearings related, and
  - (e) for ensuring that the carrying out of those investigations, the holding of those hearings and the taking of those decisions are done independently of the body. 25
- (2) In this paragraph –
- “public interest cases” means matters which raise or appear to raise important issues affecting the public interest; 30
  - “statutory audit function” means any function performed as a statutory auditor.

*Supplementary: arrangements to operate independently of body*

- 25 (1) This paragraph applies for the purposes of –
- (a) paragraph 21(b), 35
  - (b) paragraph 22(b),
  - (c) paragraph 23(1)(b), or
  - (d) paragraph 24(1)(e).
- (2) Arrangements are not to be regarded as appropriate for the purpose of ensuring that a thing is done independently of the body unless they are designed to ensure that the body –
- (a) will have no involvement in the appointment or selection of any of the persons who are to be responsible for doing that thing, and
  - (b) will not otherwise be involved in the doing of that thing. 40

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

*Supplementary: funding of arrangements*

- 26 The body must pay any of the costs of maintaining any arrangements within paragraph 21, 22, 23 or 24 which the arrangements provide are to be paid by it. 5

*Supplementary: scope of arrangement*

- 27 Arrangements may qualify as arrangements within any of paragraphs 21, 22, 23 and 24 even though the matters for which they provide are more extensive in any respect than those mentioned in the applicable paragraph. 10

SCHEDULE 11

Section 849

RECOGNISED PROFESSIONAL QUALIFICATIONS

PART 1

GRANT AND REVOCATION OF RECOGNITION OF A PROFESSIONAL QUALIFICATION 15

*Application for recognition of professional qualification*

- 1 (1) A qualifying body may apply to the Secretary of State for an order declaring a qualification offered by it to be a recognised professional qualification for the purposes of this Part of this Act (“a recognition order”).
- (2) In this Part of this Act “a recognised qualifying body” means a qualifying body offering a recognised professional qualification. 20
- (3) Any application must be –
- (a) made in such manner as the Secretary of State may direct, and
- (b) accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application. 25
- (4) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (5) The directions and requirements given or imposed under sub-paragraphs (3) and (4) may differ as between different applications. 30
- (6) The Secretary of State may require any information to be furnished under this paragraph to be in such form or verified in such manner as he may specify.
- (7) In the case of examination standards, the verification required may include independent moderation of the examinations over such a period as the Secretary of State considers necessary. 35
- (8) Every application must be accompanied by –
- (a) a copy of the applicant’s rules, and

- (b) a copy of any guidance issued by the applicant in writing.
- (9) The reference in sub-paragraph (8)(b) to guidance issued by the applicant is a reference to any guidance or recommendation –
- (a) issued or made by it to all or any class of persons holding or seeking to hold a qualification, or approved or seeking to be approved by the body for the purposes of giving practical training, 5
  - (b) relevant for the purposes of this Part of this Act, and
  - (c) intended to have continuing effect,
- including any guidance or recommendation relating to a matter within sub-paragraph (10). 10
- (10) The matters within this sub-paragraph are –
- (a) admission to or expulsion from a course of study leading to a qualification,
  - (b) the award or deprivation of a qualification, and
  - (c) the approval of a person for the purposes of giving practical training or the withdrawal of such an approval, 15
- so far as relevant for the purposes of this Part of this Act.

*Grant and refusal of recognition*

- 2 (1) The Secretary of State may, on an application duly made in accordance with paragraph 1 and after being furnished with all such information as he may require under that paragraph, make or refuse to make a recognition order in respect of the qualification in relation to which the application was made. 20
- (2) The Secretary of State may make a recognition order only if it appears to him, from the information furnished by the applicant and having regard to any other information in his possession, that the requirements of Part 2 of this Schedule are satisfied in relation to the qualification. 25
- (3) Where the Secretary of State refuses an application for a recognition order he must give the applicant a written notice to that effect specifying which requirements, in his opinion, are not satisfied.
- (4) A recognition order must state the date on which it takes effect. 30

*Revocation of recognition*

- 3 (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him –
- (a) that any requirement of Part 2 of this Schedule is not satisfied in relation to the qualification to which the recognition order relates, or 35
  - (b) that the qualifying body has failed to comply with any obligation imposed on it by or by virtue of this Part of this Act.
- (2) An order revoking a recognition order must state the date on which it takes effect, which must be after the period of three months beginning with the date on which the revocation order is made. 40
- (3) Before revoking a recognition order the Secretary of State must –
- (a) give written notice of his intention to do so to the qualifying body,

- (b) take such steps as he considers reasonably practicable for bringing the notice to the attention of persons holding the qualification or in the course of studying for it, and
  - (c) publish the notice in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected. 5
- (4) A notice under sub-paragraph (3) must –
  - (a) state the reasons for which the Secretary of State proposes to act, and
  - (b) give particulars of the rights conferred by sub-paragraph (5).
- (5) A person within sub-paragraph (6) may, within the period of three months beginning with the date of service or publication or such longer period as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State. 10
- (6) The persons within this sub-paragraph are – 15
  - (a) the qualifying body on which a notice is served under sub-paragraph (3),
  - (b) any person holding the qualification or in the course of studying for it, and
  - (c) any other person who appears to the Secretary of State to be affected. 20
- (7) The Secretary of State must have regard to any representations made in accordance with subsection (5) in determining whether to revoke the recognition order.
- (8) If in any case the Secretary of State considers it essential to do so in the public interest he may revoke a recognition order without regard to the restriction imposed by sub-paragraph (2), even if – 25
  - (a) no notice has been given or published under sub-paragraph (3), or
  - (b) the period of time for making representations in pursuance of such a notice has not expired.
- (9) An order revoking a recognition order may contain such transitional provision as the Secretary of State thinks necessary or expedient. 30
- (10) A recognition order may be revoked at the request or with the consent of the qualifying body and any such revocation is not subject to –
  - (a) the restrictions imposed by sub-paragraphs (1) and (2), or
  - (b) the requirements of sub-paragraphs (3) to (5) and (7). 35
- (11) On making an order revoking a recognition order the Secretary of State must –
  - (a) give written notice of the making of the order to the qualifying body,
  - (b) take such steps as he considers reasonably practicable for bringing the making of the order to the attention of persons holding the qualification or in the course of studying for it, and 40
  - (c) publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

*Transitional provision* 45

4 A recognition order made and not revoked under –

- (a) paragraph 2(1) of Schedule 12 to the Companies Act 1989 (c. 40), or  
 (b) paragraph 2(1) of Schedule 12 to the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)),  
 before the commencement of this Chapter of this Part of this Act is to have effect after the commencement of this Chapter as a recognition order made under paragraph 2(1) of this Schedule. 5

*Orders not statutory instruments*

- 5 Orders under this Part of this Schedule shall not be made by statutory instrument.

PART 2 10

REQUIREMENTS FOR RECOGNITION OF A PROFESSIONAL QUALIFICATION

*Entry requirements*

- 6 (1) The qualification must only be open to persons who –  
 (a) have attained university entrance level, or  
 (b) have a sufficient period of professional experience. 15
- (2) In relation to a person who has not been admitted to a university or other similar establishment in the United Kingdom, “attaining university entrance level” means –  
 (a) being educated to such a standard as would entitle him to be considered for such admission on the basis of – 20  
     (i) academic or professional qualifications obtained in the United Kingdom and recognised by the Secretary of State to be of an appropriate standard, or  
     (ii) academic or professional qualifications obtained outside the United Kingdom which the Secretary of State considers to be of an equivalent standard, or 25  
 (b) being assessed, on the basis of written tests of a kind appearing to the Secretary of State to be adequate for the purpose (with or without oral examination), as of such a standard of ability as would entitle him to be considered for such admission. 30
- (3) The assessment, tests and oral examination referred to in sub-paragraph (2)(b) may be conducted by –  
 (a) the qualifying body, or  
 (b) some other body approved by the Secretary of State.
- (4) The reference in sub-paragraph (1)(b) to “a sufficient period of professional experience” is to not less than seven years’ experience in a professional capacity in the fields of finance, law and accountancy. 35

*Requirement for theoretical instruction or professional experience*

- 7 (1) The qualification must be restricted to persons who –  
 (a) have completed a course of theoretical instruction in the subjects prescribed for the purposes of paragraph 8, or 40  
 (b) have a sufficient period of professional experience.

- (2) The reference in sub-paragraph (1)(b) to “a sufficient period of professional experience” is to not less than seven years’ experience in a professional capacity in the fields of finance, law and accountancy.

*Examination*

- 8 (1) The qualification must be restricted to persons who have passed an examination (at least part of which is in writing) testing – 5
- (a) theoretical knowledge of the subjects prescribed for the purposes of this paragraph by regulations made by the Secretary of State, and
  - (b) ability to apply that knowledge in practice,
- and requiring a standard of attainment at least equivalent to that required to obtain a degree from a university or similar establishment in the United Kingdom. 10
- (2) The qualification may be awarded to a person without his theoretical knowledge of a subject being tested by examination if he has passed a university or other examination of equivalent standard in that subject or holds a university degree or equivalent qualification in it. 15
- (3) The qualification may be awarded to a person without his ability to apply his theoretical knowledge of a subject in practice being tested by examination if he has received practical training in that subject which is attested by an examination or diploma recognised by the Secretary of State for the purposes of this paragraph. 20
- (4) Regulations under this paragraph are subject to negative resolution procedure.

*Practical training*

- 9 (1) The qualification must be restricted to persons who have completed at least three years’ practical training of which – 25
- (a) part was spent being trained in statutory audit work, and
  - (b) a substantial part was spent being trained in statutory audit work or other audit work of a description approved by the Secretary of State as being similar to statutory audit work. 30
- (2) For the purpose of sub-paragraph (1) “statutory audit work” includes the work of a person appointed as the auditor of a person under the law of a country or territory outside the United Kingdom where it appears to the Secretary of State that the law and practice with respect to the audit of accounts is similar to that in the United Kingdom. 35
- (3) The training must be given by persons approved by the body offering the qualification as persons whom the body is satisfied, in the light of undertakings given by them and the supervision to which they are subject (whether by the body in itself or some other body or organisation), will provide adequate training. 40
- (4) At least two-thirds of the training must be given by a person –
- (a) eligible for appointment as a statutory auditor, or
  - (b) eligible for a corresponding appointment as an auditor under the law of a member State, or part of a member State, other than the United Kingdom. 45



*Supplementary provision with respect to a sufficient period of professional experience*

- 10 (1) Periods of theoretical instruction in the fields of finance, law and accountancy may be deducted from the required period of professional experience, provided the instruction –
- (a) lasted at least one year, and 5
  - (b) is attested by an examination recognised by the Secretary of State for the purposes of this paragraph;
- but the period of professional experience may not be so reduced by more than four years.
- (2) The period of professional experience together with the practical training required in the case of persons satisfying the requirement in paragraph 7 by virtue of having a sufficient period of professional experience must not be shorter than the course of theoretical instruction referred to in that paragraph and the practical training required in the case of persons satisfying the requirement of that paragraph by virtue of having completed such a course. 10
- 15

*The body offering the qualification*

- 11 (1) The body offering the qualification must have –
- (a) rules and arrangements adequate to ensure compliance with the requirements of paragraphs 6 to 10, and 20
  - (b) adequate arrangements for the effective monitoring of its continued compliance with those requirements.
- (2) The arrangements must include arrangements for monitoring –
- (a) the standard of the body’s examinations, and
  - (b) the adequacy of the practical training given by the persons approved by it for that purpose. 25

SCHEDULE 12

Section 871

ARRANGEMENTS IN WHICH REGISTERED THIRD COUNTRY AUDITORS ARE REQUIRED TO PARTICIPATE

*Arrangements for independent monitoring of audits of traded non-Community companies* 30

- 1 (1) The arrangements referred to in section 871(1)(a) are appropriate arrangements –
- (a) for enabling the performance by the registered third country auditor of third country audit functions to be monitored by means of inspections carried out under the arrangements, and 35
  - (b) for ensuring that the carrying out of such monitoring and inspections is done independently of the registered third country auditor.
- (2) In this paragraph “third country audit function” means any function performed as a third country auditor.

*Arrangements for independent investigations for disciplinary purposes*

- 2 (1) The arrangements referred to in section 871(1)(b) are appropriate arrangements –
- (a) for the carrying out of investigations into matters arising in connection with the performance of third country audit functions by the registered third country auditor, 5
  - (b) for the holding of disciplinary hearings relating to the registered third country auditor which appear to be desirable following the conclusion of such investigations,
  - (c) for requiring such hearings to be held in public except where the interests of justice otherwise require, 10
  - (d) for the persons before whom such hearings have taken place to decide whether (and, if so, what) disciplinary action should be taken against the registered third country auditor, and
  - (e) for ensuring that the carrying out of those investigations, the holding of those hearings and the taking of those decisions are done independently of the registered third country auditor. 15
- (2) In this paragraph –
- “disciplinary action” includes the imposition of a fine; and
  - “third country audit function” means any function performed as a third country auditor. 20

*Supplementary: arrangements to operate independently of third country auditor*

- 3 (1) This paragraph applies for the purposes of –
- (a) paragraph 1(1)(b), or
  - (b) paragraph 2(1)(e). 25
- (2) Arrangements are not to be regarded as appropriate for the purpose of ensuring that a thing is done independently of the registered third country auditor unless they are designed to ensure that the registered third country auditor –
- (a) will have no involvement in the appointment or selection of any of the persons who are to be responsible for doing that thing, and
  - (b) will not otherwise be involved in the doing of that thing. 30
- (3) Sub-paragraph (2) imposes a minimum requirement and does not preclude the possibility that additional criteria may need to be satisfied in order for the arrangements to be regarded as appropriate for the purpose in question. 35

*Supplementary: funding of arrangements*

- 4 (1) The registered third country auditor must pay any of the costs of maintaining any relevant arrangements which the arrangements provide are to be paid by it.
- (2) For this purpose “relevant arrangements” are arrangements within paragraph 1 or 2 in which the registered third country auditor is obliged to participate. 40

*Supplementary: scope of arrangements*

- 5 Arrangements may qualify as arrangements within either of paragraphs 1 and 2 even though the matters for which they provide are more extensive in any respect than those mentioned in the applicable paragraph.

*Specification of particular arrangements by the Secretary of State* 5

- 6 (1) If there exist two or more sets of arrangements within paragraph 1 or within paragraph 2, the obligation of a registered third country auditor under section 871(1)(a) or (b), as the case may be, is to participate in such set of arrangements as the Secretary of State may by order specify.
- (2) An order under sub-paragraph (1) is subject to negative resolution procedure. 10

## SCHEDULE 13

Section 881

## SUPPLEMENTARY PROVISIONS WITH RESPECT TO DELEGATION ORDER

*Operation of this Schedule*

- 1 (1) This Schedule has effect in relation to a body designated by a delegation order under section 881 as follows— 15
- (a) paragraphs 2 to 12 have effect in relation to the body where it is established by the order;
- (b) paragraphs 2 and 6 to 11 have effect in relation to the body where it is an existing body; 20
- (c) paragraph 13 has effect in relation to the body where it is an existing body that is an unincorporated association.
- (2) In their operation in accordance with sub-paragraph (1)(b), paragraphs 2 and 6 apply only in relation to— 25
- (a) things done by or in relation to the body in or in connection with the exercise of functions transferred to it by the delegation order, and
- (b) functions of the body which are functions so transferred.
- (3) Any power conferred by this Schedule to make provision by order is a power to make provision by an order under section 881.

*Status* 30

- 2 The body is not to be regarded as acting on behalf of the Crown and its members, officers and employees are not to be regarded as Crown servants.

*Name, members and chairman*

- 3 (1) The body is to be known by such name as may be specified in the delegation order. 35
- (2) The body is to consist of such persons (not being less than eight) as the Secretary of State may appoint after such consultation as he thinks appropriate.

- (3) The chairman of the body is to be such person as the Secretary of State may appoint from among its members.
- (4) The Secretary of State may make provision by order as to—
  - (a) the terms on which the members of the body are to hold and vacate office; 5
  - (b) the terms on which a person appointed as chairman is to hold and vacate the office of chairman.

*Financial provisions*

- 4 (1) The body must pay to its chairman and members such remuneration, and such allowances in respect of expenses properly incurred by them in the performance of their duties, as the Secretary of State may determine. 10
- (2) As regards any chairman or member in whose case the Secretary of State so determines, the body must pay or make provision for the payment of—
  - (a) such pension, allowance or gratuity to or in respect of that person on his retirement or death, or 15
  - (b) such contributions or other payment towards the provision of such a pension, allowance or gratuity, as the Secretary of State may determine.
- (3) Where—
  - (a) a person ceases to be a member of the body otherwise than on the expiry of his term of office, and 20
  - (b) it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the body must make a payment to him by way of compensation of such amount as the Secretary of State may determine. 25

*Proceedings*

- 5 (1) The delegation order may contain such provision as the Secretary of State considers appropriate with respect to the proceedings of the body.
- (2) The delegation order may, in particular— 30
  - (a) authorise the body to discharge any functions by means of committees consisting wholly or partly of members of the body;
  - (b) provide that the validity of proceedings of the body, or of any such committee, is not affected by any vacancy among the members or any defect in the appointment of any member. 35

*Fees*

- 6 (1) The body may retain fees payable to it.
- (2) The fees must be applied for—
  - (a) meeting the expenses of the body in discharging its functions, and 40
  - (b) any purposes incidental to those functions.
- (3) Those expenses include any expenses incurred by the body on such staff, accommodation, services and other facilities as appear to it to be necessary or expedient for the proper performance of its functions.

- (4) In prescribing the amount of fees in the exercise of the functions transferred to it the body must prescribe such fees as appear to it sufficient to defray those expenses, taking one year with another.
- (5) Any exercise by the body of the power to prescribe fees requires the approval of the Secretary of State. 5
- (6) The Secretary of State may, after consultation with the body, by order vary or revoke any regulations prescribing fees made by the body.

*Legislative functions*

- 7 (1) Regulations or an order made by the body in the exercise of the functions transferred to it must be made by instrument in writing, but not by statutory instrument. 10
- (2) The instrument must specify the provision of this Part of this Act under which it is made.
- (3) The Secretary of State may by order impose such requirements as he thinks necessary or expedient as to the circumstances and manner in which the body must consult on any regulations or order it proposes to make. 15
- (4) Nothing in this Part applies to make regulations or an order made by the body subject to negative resolution procedure or affirmative resolution procedure.
- 8 (1) Immediately after an instrument is made it must be printed and made available to the public with or without payment. 20
- (2) A person is not to be taken to have contravened any regulation or order if he shows that at the time of the alleged contravention the instrument containing the regulation or order had not been made available as required by this paragraph. 25
- 9 (1) The production of a printed copy of an instrument purporting to be made by the body on which is endorsed a certificate signed by an officer of the body authorised by it for the purpose and stating – 30
- (a) that the instrument was made by the body,
- (b) that the copy is a true copy of the instrument, and
- (c) that on a specified date the instrument was made available to the public as required by paragraph 8,
- is evidence (or, in Scotland, sufficient evidence) of the facts stated in the certificate.
- (2) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be deemed to have been duly signed unless the contrary is shown. 35
- (3) Any person wishing in any legal proceedings to cite an instrument made by the body may require the body to cause a copy of it to be endorsed with such a certificate as is mentioned in this paragraph.

*Report and accounts* 40

- 10 (1) The body must, at least once in each calendar year for which the delegation order is in force, make a report to the Secretary of State on –
- (a) the discharge of the functions transferred to it, and

- (b) such other matters as the Secretary of State may by order require.
- (2) The delegation order may modify subsection (1) as it has effect in relation to the calendar year in which the order comes into force or is revoked.
- (3) The Secretary of State must lay before Parliament copies of each report received by him under this paragraph. 5
- (4) The following provisions of this paragraph apply as follows—
- (a) sub-paragraphs (5) and (6) apply only where the body is established by the order, and
  - (b) sub-paragraphs (7) and (8) apply only where the body is an existing body. 10
- (5) The Secretary of State may, with the consent of the Treasury, give directions to the body with respect to its accounts and the audit of its accounts.
- (6) A person may only be appointed as auditor of the body if he is eligible for appointment as a statutory auditor.
- (7) Unless the body is a company to which section 226 of the Companies Act 1985 (c. 6) (duty to prepare individual company accounts) applies, the Secretary of State may, with the consent of the Treasury, give directions to the body with respect to its accounts and the audit of its accounts. 15
- (8) Whether or not the body is a company to which section 226 of the Companies Act 1985 applies, the Secretary of State may direct that any provisions of that Act specified in the directions are to apply to the body, with or without any modifications so specified. 20

*Other supplementary provisions*

- 11 (1) The transfer of a function to a body designated by a delegation order does not affect anything previously done in the exercise of the function transferred; and the resumption of a function so transferred does not affect anything previously done in exercise of the function resumed. 25
- (2) The Secretary of State may by order make such transitional and other supplementary provision as he thinks necessary or expedient in relation to the transfer or resumption of a function. 30
- (3) The provision that may be made in connection with the transfer of a function includes, in particular, provision—
- (a) for modifying or excluding any provision of this Part of this Act in its application to the function transferred;
  - (b) for applying to the body designated by the delegation order, in connection with the function transferred, any provision applying to the Secretary of State which is contained in or made under any other enactment; 35
  - (c) for the transfer of any property, rights or liabilities from the Secretary of State to that body; 40
  - (d) for the carrying on and completion by that body of anything in the process of being done by the Secretary of State when the order takes effect;
  - (e) for the substitution of that body for the Secretary of State in any instrument, contract or legal proceedings. 45

- (4) The provision that may be made in connection with the resumption of a function includes, in particular, provision –
- (a) for the transfer of any property, rights or liabilities from that body to the Secretary of State;
  - (b) for the carrying on and completion by the Secretary of State of anything in the process of being done by that body when the order takes effect; 5
  - (c) for the substitution of the Secretary of State for that body in any instrument, contract or legal proceedings.
- 12 Where a delegation order is revoked, the Secretary of State may by order make provision – 10
- (a) for the payment of compensation to persons ceasing to be employed by the body established by the delegation order;
  - (b) as to the winding up and dissolution of the body.
- 13 (1) This paragraph applies where the body is an unincorporated association. 15
- (2) Any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.
- (3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any transferred function. 20
- (4) In relation to proceedings brought as mentioned in sub-paragraph (2), any reference in paragraph 11(3)(e) or (4)(c) to the body replacing or being replaced by the Secretary of State in any legal proceedings is to be read with the appropriate modifications.

## SCHEDULE 14

Section 893 25

## STATUTORY AUDITORS: CONSEQUENTIAL AMENDMENTS

*Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)*

- 1 (1) Section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (grants to bodies concerned with accounting standards etc) is amended as follows. 30
- (2) In subsection (2) –
- (a) in paragraph (f) for “paragraph 17” to the end substitute “paragraph 21, 22, 23(1) or 24(1) of Schedule 10 to the Company Law Reform Act 2006;”,
  - (b) in paragraph (g) for “Part 2 of that Act” substitute “Part 35 of that Act”. 35
- (3) In subsection (5), in the definition of “professional accountancy body” –
- (a) in paragraph (a) for “Part 2 of the Companies Act 1989 (c. 40)” substitute “Part 35 of the Company Law Reform Act 2006”, and
  - (b) in paragraph (b) for “section 32” substitute “section 849”. 40

## SCHEDULE 15

Section 901

## TRANSPARENCY OBLIGATIONS AND RELATED MATTERS: MINOR AND CONSEQUENTIAL AMENDMENTS

## PART 1

	AMENDMENTS OF THE FINANCIAL SERVICES AND MARKETS ACT 2000	5
1	Part 6 of the Financial Services and Markets Act 2000 (listing and other matters) is amended as follows.	
2	In section 73 (general duty of competent authority), after subsection (1) insert –	
	“(1A) To the extent that those general functions are functions under or relating to transparency rules, subsection (1)(c) and (f) have effect as if the references to a regulated market were references to a market.”	10
3	In section 73A (Part 6 Rules), after subsection (5) insert –	
	“(6) Transparency rules and corporate governance rules are not listing rules, disclosure rules or prospectus rules, but are Part 6 rules.”	15
4	For the cross-heading before section 90 substitute “ <i>Compensation for false or misleading statements etc</i> ”.	
5	For the heading to section 90 substitute “ <b>Compensation for statements in listing particulars or prospectus</b> ”.	
6	(1) Section 91 (penalties for breach of Part 6 rules) is amended as follows.	20
	(2) For subsection (1) substitute –	
	“(1) If the competent authority considers that –	
	(a) an issuer of listed securities, or	
	(b) an applicant for listing,	
	has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate.	25
	(1ZA) If the competent authority considers that –	
	(a) an issuer who has requested or approved the admission of a financial instrument to trading on a regulated market,	
	(b) a person discharging managerial responsibilities within such an issuer, or	30
	(c) a person connected with such a person discharging managerial responsibilities,	
	has contravened any provision of disclosure rules, it may impose on him a penalty of such amount as it considers appropriate.”	35
	(3) After subsection (1A) insert –	
	“(1B) If the competent authority considers –	
	(a) that a person has contravened –	
	(i) a provision of transparency rules or a provision otherwise made in accordance with the transparency obligations directive, or	40



- (ii) a provision of corporate governance rules, or
- (b) that a person on whom a requirement has been imposed under section 89J (power to suspend or prohibit trading of securities in case of infringement of applicable transparency obligation), has contravened that requirement, 5  
it may impose on the person a penalty of such amount as it considers appropriate.”.
- (4) In subsection (2) for “(1)(a), (1)(b)(ii) or (1A)” substitute “(1), (1ZA)(a), (1A) or (1B)”.
- 7 In section 96B (persons discharging managerial responsibilities and connected persons) – 10
- (a) for the heading substitute “Disclosure rules: persons responsible for compliance”;
- (b) in subsection (1) for “For the purposes of this Part” substitute “for the purposes of the provisions of this Part relating to disclosure rules”. 15
- 8 In section 97(1) (appointment by the competent authority of persons to carry out investigations), for paragraphs (a) and (b) substitute –
- “(a) there may have been a contravention of –
- (i) a provision of this Part or of Part 6 rules, or
- (ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive; 20
- (b) a person who was at the material time a director of a person mentioned in section 91(1), (1ZA)(a), (1A) or (1B) has been knowingly concerned in a contravention by that person of – 25
- (i) a provision of this Part or of Part 6 rules, or
- (ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;”.
- 9 In section 99 (fees) after subsection (1B) insert – 30
- “(1C) Transparency rules may require the payment of fees to the competent authority in respect of the continued admission of financial instruments to trading on a regulated market.”.
- 10 In section 102A(3) (meaning of “transferable securities”) for “the investment services directive” substitute “Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments”. 35
- 11 (1) Section 103(1) (interpretation of Part 6) is amended as follows.
- (2) In the definition of “regulated market” for “Article 1.13 of the investment services directive” substitute “Article 4.1(14) of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments”. 40
- (3) At the appropriate place insert –
- ““votesholder information” has the meaning given by section 89B(2);”.

## PART 2

AMENDMENTS OF THE COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY  
ENTERPRISE) ACT 2004

- 12 Chapter 2 of Part 1 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (accounts and reports) is amended as follows. 5
- 13 (1) Section 14 (supervision of periodic accounts and reports of issuers of listed securities) is amended as follows.
- (2) In subsection (2)(a) –
- (a) for “listed” substitute “transferable”;
- (b) for “listing” substitute “Part 6”. 10
- (3) In subsection (3)(a) –
- (a) for “listed” substitute “transferable”;
- (b) for “listing” substitute “Part 6”.
- (4) In subsection (7)(b) for “listed” substitute “transferable”.
- (5) In subsection (12) – 15
- (a) for ““listed securities” and “listing rules” have” substitute ““Part 6 rules” has”;
- (b) for the definition of “issuer” substitute –  
““issuer” has the meaning given by section 102A(6);”;
- (c) in the definition of “periodic” for “listing” substitute “Part 6”; 20
- (d) at the end add –  
““transferable securities” has the meaning given by section 102A(3) of that Act.”.
- 14 (1) Section 15 (application of certain company law provisions to bodies appointed under section 14) is amended as follows. 25
- (2) In subsection (5)(a) –
- (a) for “listed” substitute “transferable”;
- (b) for “listing” substitute “Part 6”.
- (3) In subsection (5B)(a) –
- (a) for “listed” substitute “transferable”; 30
- (b) for “listing” substitute “Part 6”.
- (4) In subsection (6)(b) for ““listing rules” and “security”” substitute ““Part 6 rules” and “transferable securities””.

## SCHEDULE 16

Section 920

## REPEALS

35

## Company law repeals (Great Britain)

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Companies Act 1985 (c. 6)	Sections 1 to 88.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Companies Act 1985 (c. 6) – <i>cont.</i>	<p>Section 95. Sections 97 and 98. Sections 117 and 118. Sections 120 and 121. 5 In section 122(1) –     (a) paragraphs (a) to (d);     (b) the words “consolidated, divided, converted, sub-divided,” and “, or the stock reconverted”. 10 Sections 123 and 124. Section 127(5). In section 128 –     (a) in subsection (3), the words from “otherwise than” to “section 380”, and 15     (b) in subsection (4), the words from “(otherwise than” to “above)”. In section 129 –     (a) in subsection (1), the words from “with rights which” to “section 380 applies”, 20     (b) in subsection (2), the words from “otherwise than” to “section 380”, and     (c) in subsection (3), the words from “(otherwise than” to “above)”. In section 135(2), the words following paragraph (c). 25 Section 138(5) and (6). In section 141, “and liable to a fine”. In section 143(2) in subsection (2), the words “the company is liable” to “or both; and,”. 30 Sections 155 to 158. Section 162A(2). Section 169(4), (5) and (7) to (9). Section 183(4) to (6). Sections 190 and 191. 35 Sections 198 to 262A. In section 281, “or rule of law”. Sections 282 to 361. Sections 363 to 394A. In section 426(7), the words “; and any person” to the end. 40 In section 427(5), the words “; and if default is made” to the end. Section 430A(4). In section 437 – 45     (a) in subsection (1), the second sentence, and     (b) subsections (1B) and (1C). Section 438.</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Companies Act 1985 (c. 6) – <i>cont.</i>	<p>In section 439 –</p> <p>(a) in subsection (2), “, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438”, 5</p> <p>(b) subsections (3) and (7), and</p> <p>(c) in subsection (8), “; and any such liability imposed by subsection (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subsection (3)”. 10</p> <p>Section 442(2).                      Section 446.                      In section 448(7), the words “and liable to a fine.” to the end. 15</p> <p>Section 449(7).                      Section 450(4).                      Section 451(3).                      Section 453(1A)(b).                      Section 453A(6). 20</p> <p>In section 461(5), the words “; and if a company makes default” to the end.                      Section 651.                      In section 652A(1), the word “private”.                      In section 652E – 25</p> <p>(a) in subsection (1), “and liable to a fine”, and</p> <p>(b) in subsection (2), “and liable to imprisonment or a fine, or both”.                      In section 652F(2), “and liable to a fine”. 30</p> <p>Sections 653.                      Sections 675 to 677.                      Sections 680 to 720.                      Sections 722 to 723F.                      Sections 725 to 734 35</p> <p>Section 735.                      Section 735B.                      Sections 740 to 742A.                      Section 743A.</p> <p>In section 744, the definitions of “agent”, “articles”, “communication”, “the Companies Acts”, “document”, “electronic communication”, “EEA State”, “expert”, “Gazette”, “insurance market activity”, “memorandum”, “official seal”, “oversea company”, “place of business”, “prospectus”, “prospectus issued generally” and “registrar of companies”. 40</p> <p>Section 745.                      Schedule 1. 50</p> <p>In Schedule 2, Part 2.                      Schedules 3 to 11.                      Schedule 13.                      Schedule 15A.                      Schedules 21 to 24. 55</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Insolvency Act 1986 (c. 45)	In Schedule 10, in the entry relating to section 201(4), the word “office”. In Schedule 13, in Part 1, the entries relating to the following provisions of the Companies Act 1985 –	5
	(a) section 13(4), (b) section 44(7), and (c) section 156(3).	
Financial Services Act 1986 (c. 60)	In Schedule 16, paragraph 20.	10
Companies Act 1989 (c. 40)	Sections 1 to 22. Section 56(5). Sections 57 and 58. Section 64(2). Section 66(3). Section 71. Sections 92 to 107. Section 108(1) to (3). Section 109(1) and (2). Section 110. Section 113. Section 114(1). Sections 115 to 123. Sections 125 and 126. Section 127(1), (2), (4), (6) and (7). Section 128. Section 129(1). Section 130(1) to (5). Sections 133 and 134. Section 136. Section 137(1). Section 138. Section 139(1) to (3). Section 142.	15
	In section 143, subsections (1) and (4) to (11). In section 207(4), the second sentence. Schedules 1 to 9.	20
	In Schedule 10, paragraphs 1, 3, 10, 11, 12 to 15, 18(7), 19 to 21, 23 and 24. Schedules 15 and 16.	25
	In Schedule 17, paragraphs 1 to 4 and 7. In Schedule 19, paragraphs 2 to 9, 12 to 14, 17, 18 and 21.	30
Age of Legal Capacity (Scotland) Act 1991 (c. 50)	In Schedule 1, paragraph 39.	35
Charities Act 1993 (c. 10)	In Schedule 6, paragraph 20.	
Welsh Language Act 1993 (c. 38)	Section 30(3) and (6).	
Deregulation and Contracting Out Act 1994 (c. 40)	In Schedule 5, paragraph 4. In Schedule 16, paragraph 8.	50
Requirements of Writing (Scotland) Act 1995 (c. 7)	In Schedule 4, paragraphs 51 to 54.	

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 56(3) and (4).	
Disability Discrimination Act 1995 (c. 50)	In Schedule 6, paragraph 4.	5
Financial Services and Markets Act 2000 (c. 8)	Section 143.	
Political Parties, Elections and Referendums Act 2000 (c. 41)	Sections 139 and 140. Schedule 19.	10
Criminal Justice and Police Act 2001 (c. 16)	Section 45. In Schedule 2, paragraph 17.	
Enterprise Act 2002 (c. 40)	In Schedule 17, paragraph 4.	
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	Sections 7 to 10. Section 11(1). Sections 12 and 13. Sections 19 and 20. Schedule 1. In Schedule 2, paragraphs 5 to 10, 22 to 24 and 26. In Schedule 6, paragraphs 1 to 9.	15 20
Civil Partnership Act 2004 (c. 33)	In Schedule 27, paragraphs 99 to 102 and 104.	
Constitutional Reform Act 2005 (c. 4)	In Schedule 11, in paragraph 4(3), the reference to the Companies Act 1985.	25

Repeals and revocations relating to Northern Ireland

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))	The whole Order.	30
Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))	The whole Order.	
Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 (N.I. 7))	The whole Order.	35
Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 (N.I. 9))	Article 3.	40
Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18))	The whole Order.	
Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))	In Schedule 7, in the entry relating to Article 166(4), the word “office”. In Schedule 9, Part I.	45

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
European Economic Interest Groupings Regulations (Northern Ireland) 1989 (S.R. 1989/216)	The whole Regulations.	5
Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))	The whole Order.	
Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))	Parts II to IV. Part VI. Schedules 1 to 6.	10
Criminal Justice Act 1993 (c. 36)	In Schedule 5, Part 2. Schedule 6.	
Financial Provisions (Northern Ireland) Order 1993 (S.I. 1993/1252 (N.I. 5))	Article 15.	15
Deregulation and Contracting Out Act 1994 (c. 40)	Section 13(2).	
Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))	In Schedule 3, paragraph 7.	20
Deregulation and Contracting Out (Northern Ireland) Order 1996 (S.I. 1996/1632 (N.I. 11))	Article 11. Schedule 2. In Schedule 5, paragraph 4.	
Youth Justice and Criminal Evidence Act 1999 (c. 23)	In Schedule 4, paragraph 18.	25
Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12 (N.I.))	The whole Act.	
Open-Ended Investment Companies Act (Northern Ireland) 2002 (c. 13)	The whole Act.	30
Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4))	In Schedule 3, paragraphs 3 to 5.	35
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	Section 11(2). In Schedule 2, paragraphs 11 to 15.	40
Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 (S.I. 2005/1452 (N.I. 7))	Article 4(2).	

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (S.I. 2005/1967 (N.I. 17))	The whole Order.	5
<b>Other repeals</b>		
<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Limited Partnerships Act 1907 (c. 24)	In section 16(1) – (a) 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”; (b) the words from “and there shall be paid for such certificate” to the end.	10  15
Business Names Act 1985 (c. 7)	In section 17 – (a) the words “(but as to fees with the concurrence of the Treasury)”; (b) paragraph (a).	15
Companies Act 1989 (c. 40)	The whole Act.	20
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	Sections 24 to 54. Schedules 11 to 13.	20
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	Sections 1 to 6. In Schedule 2, Part 1.	25



# 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.

*Brought from the Lords 24th May 2006.*

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