

# Company Law Reform Bill [HL]

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[AS AMENDED IN GRAND COMMITTEE]

The Bill is divided into two volumes. Volume I contains Clauses 1 to 528.  
Volume II contains Clauses 529 to 884 and the Schedules to the Bill.

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A

# B I L L

[AS AMENDED IN GRAND COMMITTEE]

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.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

### GENERAL INTRODUCTORY PROVISIONS

#### *Companies and Companies Acts*

#### **1 Companies**

- (1) In the Companies Acts, unless the context otherwise requires— 5  
“company” means a company formed and registered under this Act or an existing company; and  
“existing company” means a company that immediately before the commencement of this Part was formed and registered under—  
(a) the Companies Act 1985 (c. 6), or 10  
(b) the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)),  
or was an existing company for the purposes of that Act or that Order.
- (2) Certain provisions of the Companies Acts apply to companies incorporated in the United Kingdom that— 15

- (a) are registered, but were not formed, under those Acts (see section 663),  
or
  - (b) are unregistered (see section 667).
- (3) For provisions applying to companies incorporated outside the United Kingdom, see Part 25 (overseas companies). 5

## 2 The Companies Acts

- (1) In this Act “the Companies Acts” means—
- (a) the company law provisions of this Act,
  - (b) Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (community interest companies), and 10
  - (c) the provisions of the Companies Act 1985 (c. 6) and the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) that remain in force.
- (2) The company law provisions of this Act are—
- (a) the provisions of Parts 1 to 31 of this Act, and 15
  - (b) the provisions of Parts 35 to 37 of this Act so far as they apply for the purposes of those Parts.
- (3) Except as otherwise provided—
- (a) expressions that are defined for the purposes of the company law provisions of this Act have the same meaning in the Companies Act 1985, and 20
  - (b) expressions that are defined for the purposes of that Act have the same meaning in the company law provisions of this Act.

### *Types of company*

## 3 Limited and unlimited companies 25

- (1) A company is a “limited company” if the liability of its members is limited by its constitution.  
It may be limited by shares or limited by guarantee.
- (2) If their liability is limited to the amount, if any, unpaid on the shares held by them, the company is “limited by shares”. 30
- (3) If their liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up, the company is “limited by guarantee”.
- (4) If there is no limit on the liability of its members, the company is an “unlimited company”. 35

## 4 Private and public companies

- (1) A “private company” is any company that is not a public company.
- (2) A “public company” is a company limited by shares or limited by guarantee and having a share capital—
- (a) whose certificate of incorporation states that it is a public company, and 40

- (b) in relation to which the requirements of the Companies Acts, or the former Companies Acts, as to registration or re-registration as a public company have been complied with on or after the relevant date.
- (3) For the purposes of subsection (2)(b) the relevant date is—
- (a) in relation to registration or re-registration in Great Britain, 22nd December 1980; 5
- (b) in relation to registration or re-registration in Northern Ireland, 1st July 1983.
- (4) For the two major differences between private and public companies, see Part 17. 10
- 5 Companies limited by guarantee and having share capital**
- (1) A company cannot be formed as, or become, a company limited by guarantee with a share capital.
- (2) Provision to this effect has been in force—
- (a) in Great Britain since 22nd December 1980, and 15
- (b) in Northern Ireland since 1st July 1983.
- (3) Any provision in the constitution of a company limited by guarantee that purports to divide the company’s undertaking into shares or interests is a provision for a share capital. 20  
This applies whether or not the nominal value or number of the shares or interests is specified by the provision.
- 6 Community interest companies**
- (1) In accordance with Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)—
- (a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and 25
- (b) a company limited by guarantee and having a share capital may become a community interest company.
- (2) The other provisions of the Companies Acts have effect subject to that Part. 30

## PART 2

### COMPANY FORMATION

#### *General*

- 7 Method of forming company**
- (1) A company is formed under this Act by one or more persons— 35
- (a) subscribing their names to a memorandum of association (see section 8), and
- (b) complying with the requirements of this Act as to registration (see sections 9 to 14).
- (2) A company may not be so formed for an unlawful purpose. 40

**8 Memorandum of association**

- (1) A memorandum of association is a memorandum stating that the subscribers –
- (a) wish to form a company under this Act, and
  - (b) agree to become members of the company and, in the case of a company that is to have a share capital, to take at least one share each. 5
- (2) The memorandum must be in the prescribed form and must be authenticated by each subscriber.

*Requirements for registration***9 Registration documents**

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- (1) The memorandum of association must be delivered to the registrar together with an application for registration of the company, the documents required by this section and a statement of compliance.
- (2) The application for registration must state –
- (a) the company’s proposed name, 15
  - (b) whether the company’s registered office is to be situated in England and Wales (or in Wales), in Scotland or in Northern Ireland,
  - (c) whether the liability of the members of the company is to be limited, and if so whether it is to be limited by shares or by guarantee, and
  - (d) whether the company is to be a private or a public company. 20
- (3) If the application is delivered by a person as agent for the subscribers to the memorandum of association, it must state his name and address.
- (4) The application must contain –
- (a) in the case of a company that is to have a share capital –
    - (i) a statement of initial shareholdings (see section 10), and 25
    - (ii) a statement of capital (see section 11);
  - (b) in the case of a company that is to be limited by guarantee, a statement of guarantee (see section 12);
  - (c) a statement of the company’s proposed officers (see section 13).
- (5) The application must also contain – 30
- (a) a statement of the intended address of the company’s registered office; and
  - (b) a copy of any proposed articles of association (to the extent that these are not supplied by the default application of model articles: see section 21). 35
- (6) The application must be delivered –
- (a) to the registrar of companies for England and Wales, if the registered office of the company is to be situated in England and Wales (or in Wales);
  - (b) to the registrar of companies for Scotland, if the registered office of the company is to be situated in Scotland; 40
  - (c) to the registrar of companies for Northern Ireland, if the registered office of the company is to be situated in Northern Ireland.

## 10 Statement of initial shareholdings

- (1) The statement of initial shareholdings required to be delivered in the case of a company that is to have a share capital must comply with this section.
- (2) It must contain the names and addresses of the subscribers to the memorandum of association. 5
- (3) It must state with respect to each subscriber to the memorandum –
  - (a) the number and nominal value of the shares to be taken by him on formation, and
  - (b) the amount (if any) payable in respect of each share on formation, whether on account of the nominal value or by way of a premium. 10

## 11 Statement of share capital

The statement of share capital required to be delivered in the case of a company that is to have a share capital must state with respect to the company's share capital to be taken on formation by the subscribers to the memorandum –

- (a) the total number of shares of the company, 15
- (b) the aggregate nominal value of those shares,
- (c) for each class of shares –
  - (i) prescribed particulars of the rights attached to the shares,
  - (ii) the total number of shares of that class, and
  - (iii) the aggregate nominal value of shares of that class, and 20
- (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

## 12 Statement of guarantee

- (1) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee must comply with this section. 25
- (2) It must contain the names and addresses of the subscribers to the memorandum.
- (3) It must state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for –
  - (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
  - (b) payment of the costs, charges and expenses of winding up, and
  - (c) adjustment of the rights of the contributories among themselves, 35not exceeding a specified amount.

## 13 Statement of proposed officers

- (1) The statement of the company's proposed officers required to be delivered to the registrar must contain the required particulars of –
  - (a) the person who is, or persons who are, to be the first director or directors of the company; 40

- (b) in the case of a company that is to be a public company, the person who is (or the persons who are) to be the first secretary (or joint secretaries) of the company.
- (2) The required particulars are the particulars that will be required to be stated in the company's register of directors (see sections 147 to 149) or register of secretaries (see sections 256 to 258). 5
- (3) The statement must also contain a consent by each of the persons named as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.  
If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them. 10

#### 14 Statement of compliance

- (1) The statement of compliance required to be delivered to the registrar is a statement that the requirements of this Act as to registration have been complied with. 15
- (2) The registrar may accept the statement of compliance as sufficient evidence of compliance.

#### *Registration and its effect*

#### 15 Registration

- (1) If the registrar is satisfied that the requirements of this Act as to registration are complied with, he shall register the documents delivered to him. 20
- (2) References in the Companies Acts to registration of the company are to registration under this section (or, where the context requires, under corresponding earlier provisions).

#### 16 Issue of certificate of incorporation 25

- (1) On the registration of a company, the registrar of companies shall give a certificate that the company is incorporated.
- (2) The certificate must state –
- (a) the name and registered number of the company,
  - (b) the date of its incorporation, 30
  - (c) whether it is a limited or unlimited company, and if it is limited whether it is limited by shares or limited by guarantee,
  - (d) whether it is a private or a public company, and
  - (e) whether the company's registered office is situated in England and Wales (or in Wales), in Scotland or in Northern Ireland. 35
- (3) The certificate must be signed by the registrar or authenticated by the registrar's official seal.
- (4) The certificate is conclusive evidence that the requirements of this Act as to registration have been complied with and that the company is duly registered under this Act. 40

## 17 Effect of registration

- (1) The registration of a company has the following effects as from the date of incorporation.
- (2) The subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation. 5
- (3) That body corporate is capable of exercising all the functions of an incorporated company.
- (4) The status and registered office of the company are as stated in, or in connection with, the application for registration. 10
- (5) The persons named in the statement of proposed officers –
  - (a) as director, or
  - (b) in the case of a public company, as secretary or joint secretary of the company,are deemed to have been appointed to that office. 15

### PART 3

#### A COMPANY'S CONSTITUTION

##### CHAPTER 1

###### INTRODUCTORY

## 18 A company's constitution 20

Unless the context otherwise requires, references in the Companies Acts to a company's constitution include –

- (a) the company's articles, and
- (b) any resolutions and agreements to which Chapter 3 of this Part applies.

##### CHAPTER 2 25

###### ARTICLES OF ASSOCIATION

###### *General*

## 19 Articles of association

- (1) A company must have articles of association prescribing regulations for the company. 30
- (2) Unless it is a company to which model articles apply by virtue of section 21 (default application of model articles in case of limited company), it must register articles of association.
- (3) A company's articles of association are part of its constitution.
- (4) References in the Companies Acts to a company's "articles" are to its articles of association. 35

## **20 Power of Secretary of State to prescribe model articles**

- (1) The Secretary of State may by regulations prescribe model articles of association for companies.
- (2) Different model articles may be prescribed for different descriptions of company. 5
- (3) A company may adopt all or any of the provisions of model articles.
- (4) Any amendment of model articles by regulations under this section does not affect a company registered before the amendment takes effect.  
 “Amendment” here includes addition, alteration or repeal.
- (5) Regulations under this section are subject to negative resolution procedure. 10

## **21 Default application of model articles**

- (1) In the case of a limited company –
  - (a) if articles are not registered, or
  - (b) if articles are registered, in so far as they do not exclude or modify the relevant model articles,15

the relevant model articles (so far as applicable) form part of the company’s articles in the same manner and to the same extent as if articles in the form of those articles had been duly registered.
- (2) The “relevant model articles” means the model articles prescribed for a company of that description as in force at the date on which the company is first registered. 20

### *Alteration of articles*

## **22 Alteration of articles**

- (1) A company may alter its articles by special resolution.
- (2) In the case of a company that is a charity, this is subject to – 25
  - (a) in England and Wales, section 64 of the Charities Act 1993 (c. 10);
  - (b) in Northern Ireland, Article 9 of the Charities (Northern Ireland) Order 1987 (S.I. 1987/2048 (N.I. 19)).
- (3) In the case of a company that is registered in the Scottish Charity Register, this is subject to – 30
  - (a) section 112 of the Companies Act 1989 (c. 40), and
  - (b) section 16 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

## **23 Entrenched provisions of the articles**

- (1) A company’s articles may provide that specified provisions of the articles – 35
  - (a) may not be altered or repealed, or
  - (b) may be altered or repealed only if conditions are met, or procedures are complied with, that are more restrictive than those applicable in the case of a special resolution.

This is referred to as “provision for entrenchment”. 40



- (2) Provision for entrenchment may only be made –
  - (a) in the company's articles on formation, or
  - (b) by an amendment of the company's articles agreed to by all the members of the company.

**24 Notice to registrar in case of entrenched provisions** 5

- (1) Where –
  - (a) a company's articles on formation contain provision for entrenchment, or
  - (b) a company's articles are altered so as to include such provision, the company must give notice to the registrar. 10
- (2) Where a company whose articles contain provision for entrenchment is required to send to the registrar any document making or evidencing an alteration in the company's articles, the company must deliver with it a statement of compliance.
- (3) The statement of compliance required is a statement certifying that the alteration has been made in accordance with the company's articles. 15
- (4) The registrar may rely on the statement of compliance as sufficient evidence of the matters stated in it.

**25 Notice to registrar of removal of entrenched provisions**

- (1) Where a company whose articles contain provision for entrenchment alters its articles so that they no longer contain any such provision, it must give notice of that fact to the registrar. 20
- (2) The notice must be accompanied by a statement of compliance.
- (3) The statement of compliance required is a statement certifying that the alteration has been made in accordance with the company's articles. 25
- (4) The registrar may rely on the statement of compliance as sufficient evidence of the matters stated in it.

**26 Effect of alteration of articles on company's members**

- (1) A member of a company is not bound by an alteration to its articles after the date on which he became a member, if and so far as the alteration –
  - (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or
  - (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company. 30
- (2) Subsection (1) does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration. 35

**27 Registrar to be sent copy of amended articles**

- (1) Where a company's articles are altered, the company must send to the registrar a copy of the articles as altered not later than 15 days after the alteration takes effect. 40

<p>This does not apply where the alteration is made by an enactment (see section 36).</p> <p>(2) This section does not require a company to set out in its articles any provisions of model articles that—</p> <p style="padding-left: 20px;">(a) are applied by the articles, or</p> <p style="padding-left: 20px;">(b) apply by virtue of section 21 (default application of model articles).</p> <p>(3) If a company fails to comply with this section an offence is committed by—</p> <p style="padding-left: 20px;">(a) the company, and</p> <p style="padding-left: 20px;">(b) every officer of the company who is in default.</p> <p>(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.</p>	<p></p> <p></p> <p style="text-align: right;">5</p> <p></p> <p></p> <p style="text-align: right;">10</p>
<b>28 Registrar’s notice to comply in case of failure with respect to amended articles</b>	
<p>(1) If it appears to the registrar that a company has failed to comply with any enactment requiring it—</p> <p style="padding-left: 20px;">(a) to send to the registrar a document making or evidencing an alteration in the company’s articles, or</p> <p style="padding-left: 20px;">(b) to send to the registrar a copy of the company’s articles as amended, the registrar may give notice to the company requiring it to comply.</p> <p>(2) The notice must—</p> <p style="padding-left: 20px;">(a) state the date on which it is issued, and</p> <p style="padding-left: 20px;">(b) require the company to comply within 28 days from that date.</p> <p>(3) If the company complies with the notice within the specified time, no criminal proceedings may be brought in respect of the failure to comply with the enactment mentioned in subsection (1).</p> <p>(4) If the company does not comply with the notice within the specified time, it is liable to a civil penalty of £200.  This is in addition to any liability to criminal proceedings in respect of the failure mentioned in subsection (1).</p> <p>(5) The penalty may be recovered by the registrar and is to be paid into the Consolidated Fund.</p>	<p style="text-align: right;">15</p> <p style="text-align: right;">20</p> <p></p> <p></p> <p style="text-align: right;">25</p> <p style="text-align: right;">30</p>
<i>Supplementary</i>	
<b>29 Existing companies: provisions of memorandum treated as provisions of articles</b>	
<p>(1) Provisions that immediately before the commencement of this Part were contained in a company’s memorandum but are not provisions of the kind mentioned in section 8 (provisions of new-style memorandum) are to be treated after the commencement of this Part as provisions of the company’s articles.</p> <p>(2) This applies not only to substantive provisions but also to provision for entrenchment (as defined in section 23).</p>	<p style="text-align: right;">35</p> <p style="text-align: right;">40</p>

- (3) The provisions of this Part about provision for entrenchment apply to such provision as they apply to provision made on the company’s formation, except that the duty under section 24(2) to give notice to the registrar does not apply.

### CHAPTER 3

#### RESOLUTIONS AND AGREEMENTS AFFECTING A COMPANY’S CONSTITUTION 5

#### 30 Resolutions and agreements affecting a company’s constitution

- (1) This Chapter applies to –
- (a) any special resolution;
  - (b) any resolution or agreement agreed to by all the members of a company that, if not so agreed to, would not have been effective for its purpose unless passed as a special resolution; 10
  - (c) any resolution or agreement agreed to by all the members of a class of shareholders that, if not so agreed to, would not have been effective for its purpose unless passed by some particular majority or otherwise in some particular manner; 15
  - (d) any resolution or agreement that effectively binds all members of a class of shareholders though not agreed to by all those members;
  - (e) a resolution to give, vary, revoke or renew authority for the purposes of section 540 (authority of company for allotment of shares by directors); 20
  - (f) a resolution to redenominate share capital or a class of share capital under section 583;
  - (g) a resolution of the directors of a company under section 147(2) of the Companies Act 1985 (c. 6) (resolution in connection with re-registration in consequence of company acquiring its own shares); 25
  - (h) a resolution conferring, varying, revoking or renewing authority under section 166 of that Act (market purchase of company’s own shares);
  - (i) a resolution for voluntary winding up passed under section 84(1)(a) of the Insolvency Act 1986 (c. 45) or Article 70(1)(a) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)); 30
  - (j) a resolution of the director of an old public company under section 2(1) of the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) that the company should be re-registered as a public company;
  - (k) a resolution passed by virtue of regulations made under section 207 of the Companies Act 1989 (c. 40) (transfer of securities). 35
- (2) References in subsection (1) to a member of a company, or of a class of members of a company, do not include the company itself where it is such a member by virtue only of its holding shares as treasury shares.

#### 31 Copies of resolutions or agreements to be forwarded to and recorded by registrar 40

- (1) A copy of every resolution or agreement to which this Chapter applies, printed or in some other form approved by the registrar, must be –
- (a) forwarded to the registrar within 15 days after it is passed or made, and
  - (b) recorded by him.
- (2) If a company fails to comply with this section, an offence is committed by – 45

- (a) the company, and
  - (b) every officer of it 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. 5
- (4) For the purposes of this section, a liquidator of the company is treated as an officer of it.
- 32 Resolutions and agreements to be embodied in or attached to issued copies of articles** 10
- (1) Any resolution or agreement relating to a company that –
- (a) has been recorded by the registrar –
    - (i) under section 31, or
    - (ii) before the commencement of this Part, under section 380 of the Companies Act 1985 (c. 6) or Article 388 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (which made provision corresponding to this Chapter), and
  - (b) that is for the time being in force,
- must be embodied in or annexed to every copy of the company’s articles issued by the company. 20
- (2) If a company fails to comply with this section, an offence is committed by 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 for each occasion on which copies are issued or, as the case may be, requested. 25
- (4) For the purposes of this section, a liquidator of the company is treated as an officer of it.

## CHAPTER 4

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

- Statement of company’s objects* 30
- 33 Statement of company’s objects**
- (1) Unless a company’s articles specifically restrict the objects of the company, its objects are unrestricted.
- (2) Where a company alters its articles so as to add, remove or alter a statement of the company’s objects – 35
- (a) it must give notice to the registrar,
  - (b) on receipt of the notice, the registrar shall register it, and
  - (c) the alteration is not effective until entry of that notice on the register.
- (3) Any such alteration does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. 40

- (4) In the case of a company that is a charity, the provisions of this section have effect subject to –
  - (a) in England and Wales, section 64 of the Charities Act 1993 (c. 10);
  - (b) in Northern Ireland, Article 9 of the Charities (Northern Ireland) Order 1987 (S.I. 1987/2048 (N.I. 19)).
- (5) In the case of a company that is entered in the Scottish Charity Register, the provisions of this section have effect subject to the provisions of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

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*Other provisions with respect to a company’s constitution*

**34 Constitutional documents to be provided to members** 10

- (1) A company must, on request by any member, send to him a copy of the following documents –
  - (a) an up-to-date copy of the company’s articles incorporating any alterations made to them;
  - (b) copies of any resolution or agreement relating to the company that has been recorded by the registrar –
    - (i) under section 31, or
    - (ii) before the commencement of this Part, under section 380 of the Companies Act 1985 (c. 6) or Article 388 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (which made provision corresponding to this Chapter),
  - and that is for the time being in force;
  - (c) a copy of the company’s current certificate of incorporation, and of any past certificates of incorporation;
  - (d) in the case of a company with a share capital –
    - (i) its statement of initial shareholdings, and
    - (ii) a current statement of share capital;
  - (e) in the case of a company limited by guarantee, the statement of guarantee.
- (2) The statement of capital required by subsection (1)(d)(ii) is a statement of –
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) If a company makes default in complying with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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### **35 Effect of company’s constitution**

- (1) The provisions of a company’s constitution, when registered, bind the company and its members to the same extent as if there were covenants, signed and sealed on the part of each member, to observe those provisions.
- (2) Money payable by a member to the company under its constitution is a debt due from him to the company. 5  
 In England and Wales and Northern Ireland it is of the nature of an ordinary contract debt.

### **36 Notice to registrar where company’s constitution altered by enactment**

- (1) This section applies where a company’s constitution is altered by an enactment, other than an enactment amending the general law. 10
- (2) The company must give notice of the alteration to the registrar, specifying the enactment, not later than 15 days after the enactment comes into force.  
 In the case of a special enactment the notice must be accompanied by a copy of the enactment. 15
- (3) The company must send to the registrar a copy of its constitution as altered by the enactment not later than 15 days after the alteration takes effect.
- (4) A “special enactment” means an enactment that is not a public general enactment, and includes – 20
- (a) an Act for confirming a provisional order,
  - (b) any provision of a public general Act in relation to the passing of which any of the standing orders of the House of Lords or the House of Commons relating to Private Business applied, or
  - (c) any enactment to the extent that it is incorporated or applied for the purposes of a special enactment. 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.
- (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. 30

#### *Supplementary provisions*

### **37 Right to participate in profits otherwise than as member void**

In the case of a company limited by guarantee and not having a share capital any provision in the company’s articles, or in any resolution of the company, purporting to give a person a right to participate in the divisible profits of the company otherwise than as a member is void. 35

### **38 Application to single member companies of enactments and rules of law**

Any enactment or rule of law applicable to companies formed by two or more persons or having two or more members applies with any necessary 40

modification in relation to a company formed by one person or having only one person as a member.

#### PART 4

##### A COMPANY’S CAPACITY AND RELATED MATTERS

##### *Capacity of company and power of directors to bind it* 5

#### 39 A company’s capacity

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company’s constitution.
- (2) This section has effect subject to section 42 (companies that are charities). 10

#### 40 Power of directors to bind the company

- (1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company’s constitution.
- (2) For this purpose – 15
  - (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party,
  - (b) a person dealing with a company –
    - (i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so, 20
    - (ii) is presumed to have acted in good faith unless the contrary is proved, and
    - (iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company’s constitution. 25
- (3) The references above to limitations on the directors’ powers under the company’s constitution include limitations deriving –
  - (a) from a resolution of the company or of any class of shareholders, or
  - (b) from any agreement between the members of the company or of any class of shareholders. 30
- (4) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors.  
But no such proceedings lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company. 35
- (5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors’ exceeding their powers.
- (6) This section has effect subject to –
  - section 41 (transactions with directors or their associates), and
  - section 42 (companies that are charities). 40

**41 Constitutional limitations: transactions involving directors or their associates**

- (1) This section applies to a transaction if or to the extent that its validity depends on section 40 (power of directors deemed to be free of limitations under company's constitution in favour of person dealing with company in good faith). 5  
Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.
- (2) Where – 10  
 (a) a company enters into such a transaction, and  
 (b) the parties to the transaction include –  
     (i) a director of the company or of its holding company, or  
     (ii) a person connected with any such director,  
 the transaction is voidable at the instance of the company
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (2)(b)(i) or (ii), and any director of the company who authorised the transaction, is liable – 15  
 (a) to account to the company for any gain he has made directly or indirectly by the transaction, and  
 (b) to indemnify the company for any loss or damage resulting from the transaction. 20
- (4) The transaction ceases to be voidable if –  
 (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or  
 (b) the company is indemnified for any loss or damage resulting from the transaction, or 25  
 (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or  
 (d) the transaction is affirmed by the company. 30
- (5) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (6) Nothing in the preceding provisions of this section affects the rights of any party to the transaction not within subsection (2)(b)(i) or (ii), but the court may, on the application of the company or any such party, make such order affirming, severing or setting aside the transaction on such terms as appear to the court to be just. 35
- (7) In this section –  
 (a) "transaction" includes any act; and 40  
 (b) the reference to a person connected with a director has the same meaning as in Part 10 (company directors).

**42 Constitutional limitations: companies that are charities**

- (1) Sections 39 and 40 (company's capacity and power of directors to bind company) do not apply to the acts of a company that is a charity except in favour of a person who – 45



- (a) does not know at the time the act is done that the company is a charity, or
- (b) gives full consideration in money or money’s worth in relation to the act in question and does not know (as the case may be) –
  - (i) that the act is not permitted by the company’s constitution or, 5
  - (ii) that the act is beyond the powers of the directors.
- (2) Where a company that is a charity purports to transfer or grant an interest in property, the fact that (as the case may be) –
  - (a) the act was not permitted by the company’s constitution, or
  - (b) the directors in connection with the act exceeded any limitation on their powers under the company’s constitution, 10does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company’s act.
- (3) In any proceedings arising out of subsection (1) or (2) the burden of proving – 15
  - (a) that a person knew that the company was a charity, or
  - (b) that a person knew that an act was not permitted by the company’s constitution or was beyond the powers of the directors, lies on the person asserting that fact.
- (4) In the case of a company that is a charity the affirmation of a transaction to which section 41 applies (transactions with directors or their associates) is ineffective without the prior written consent of – 20
  - (a) in England and Wales, the Charity Commissioners;
  - (b) in Northern Ireland, the Department for Social Development.
- (5) This section does not extend to Scotland (but see section 112 of the Companies Act 1989 (c. 40)). 25

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

**43 Company contracts**

- (1) Under the law of England and Wales or Northern Ireland a contract may be made – 30
  - (a) by a company, by writing under its common seal, or
  - (b) on behalf of a company, by a person acting under its authority, express or implied.
- (2) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company. 35

**44 Execution of documents**

- (1) Under the law of England and Wales or Northern Ireland a document is executed by a company –
  - (a) by the affixing of its common seal, or 40
  - (b) by signature in accordance with the following provisions.

- 
- (2) In the case of a private company a document is validly executed if it is expressed (in whatever form of words) to be executed by the company and signed –
- (a) by two directors of the company, or
  - (b) by a director of the company in the presence of a witness who attests the signature. 5
- (3) In the case of a public company a document is validly executed if it is expressed (in whatever form of words) to be executed by the company and signed –
- (a) by a director and a secretary of the company,
  - (b) by two directors of the company, or 10
  - (c) by a director of the company in the presence of a witness who attests the signature.
- (4) In favour of a purchaser a document is deemed to have been duly executed by a company if it purports to be signed in accordance with subsection (2) or (3). A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property. 15
- (5) Where a document is to be signed by a person as a director or the secretary of more than one company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity. 20
- (6) References in this section to a document being (or purporting to be) signed by a director or secretary are to be read, in a case where the office of director or secretary is held by a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.
- (7) This section applies to a document that is (or purports to be) executed by a company in the name of or on behalf of another person whether or not that person is also a company. 25
- 45 Common seal**
- A company may have a common seal, but need not have one.
- 46 Execution of deeds** 30
- (1) A document is validly executed by a company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989 (c. 34) if, and only if –
- (a) it is duly executed by the company, and
  - (b) it is delivered as a deed. 35
- (2) For the purposes of subsection (1)(b) a document is presumed to be delivered upon its being executed, unless a contrary intention is proved.
- 47 Execution of deeds abroad**
- (1) Under the law of England and Wales or Northern Ireland a company may, by writing under its common seal, empower any person, either generally or in respect of specified matters, as its attorney, to execute deeds on its behalf in any place outside the United Kingdom. 40

- (2) A deed so executed has the same effect as if executed under the company’s common seal.

#### **48 Authentication of documents**

A document or proceedings requiring authentication by a company is sufficiently authenticated for the purposes of the law of England and Wales or Northern Ireland by a signature of – 5

- (a) a director of the company, or  
(b) a person authorised by the company to act on its behalf.

#### *Formalities of doing business under the law of Scotland*

#### **49 Execution of documents by companies** 10

- (1) The following provisions form part of the law of Scotland only.
- (2) Notwithstanding the provisions of any enactment, a company need not have a company seal.
- (3) For the purposes of any enactment – 15
- (a) providing for a document to be executed by a company by affixing its common seal, or
- (b) referring (in whatever terms) to a document so executed, a document signed or subscribed by or on behalf of the company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 (c. 7) has effect as if so executed. 20

#### *Other matters*

#### **50 Official seal for use abroad**

- (1) A company that has a common seal may have an official seal for use outside the United Kingdom.
- (2) The official seal must be a facsimile of the company’s common seal, with the addition on its face of the place or places where it is to be used. 25
- (3) The official seal when duly affixed to a document has the same effect as the company’s common seal.  
This subsection does not extend to Scotland.
- (4) A company having an official seal for use outside the United Kingdom may – 30
- (a) by writing under its common seal, or
- (b) as respects Scotland, by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995,  
authorise any person appointed for the purpose to affix the official seal to any deed or other document to which the company is party. 35
- (5) As between the company and a person dealing with such an agent, the agent’s authority continues –
- (a) during the period mentioned in the instrument conferring the authority, or

- (b) if no period is mentioned, until notice of the revocation or termination of the agent's authority has been given to the person dealing with him.
- (6) The person affixing the official seal must certify in writing on the deed or other document to which the seal is affixed the date on which, and place at which, it is affixed. 5

## 51 Official seal for share certificates etc

- (1) A company that has a common seal may have an official seal for use –
- (a) for sealing securities issued by the company, or
  - (b) for sealing documents creating or evidencing securities so issued.
- (2) The official seal – 10
- (a) must be a facsimile of the company's common seal, with the addition on its face of the word "Securities", and
  - (b) when duly affixed to the document has the same effect as the company's common seal.

## 52 Pre-incorporation contracts, deeds and obligations 15

- (1) A contract that purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.
- (2) Subsection (1) applies – 20
- (a) to the making of a deed under the law of England and Wales or Northern Ireland, and
  - (b) to the undertaking of an obligation under the law of Scotland, as it applies to the making of a contract.

## 53 Bills of exchange and promissory notes 25

A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority.

## PART 5 30

A COMPANY'S NAME

### CHAPTER 1

GENERAL REQUIREMENTS

*Prohibited names*

## 54 Prohibited names 35

A company must not be registered under the Companies Acts by a name if, in the opinion of the Secretary of State –

- (a) its use by the company would constitute an offence, or

- (b) it is offensive.

*Sensitive words and expressions*

**55 Names suggesting connection with government or public authority**

- (1) The approval of the Secretary of State is required for a company to be registered under the Companies Acts by a name that would be likely to give the impression that the company is connected with – 5
  - (a) Her Majesty’s Government, any part of the Scottish administration or Her Majesty’s Government in Northern Ireland,
  - (b) a local authority, or
  - (c) any public authority specified for the purposes of this section by regulations made by the Secretary of State. 10
- (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, 15
    - (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. 20
- (3) Regulations under this section are subject to affirmative resolution procedure.

**56 Other sensitive words or expressions**

- (1) The approval of the Secretary of State is required for a company to be registered under the Companies Acts by a name that includes a word or expression for the time being specified in regulations made by the Secretary of State under this section. 25
- (2) Regulations under this section are subject to approval after being made.

**57 Duty to seek comments of government department or other specified body**

- (1) The Secretary of State may by regulations under – 30
  - (a) section 55 (name suggesting connection with government or public authority), or
  - (b) section 56 (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. 35
- (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) Where the company is applying for registration under this Act the application must – 40

- (a) include a statement that a request under this section has been made, and
  - (b) be accompanied by a copy of any response received.
- (4) Where the company is seeking to change its name, the instrument effecting the change, when sent to the registrar, must be accompanied by – 5
- (a) a statement by a director or secretary of the company that a request under this section has been made, and
  - (b) a copy of any response received.

*Permitted characters etc*

- 58 Permitted characters etc** 10
- (1) The Secretary of State may make provision by regulations –
    - (a) as to the letters or other characters, signs or symbols (including accents and other diacritical marks) and punctuation that may be used in the name of a company registered under the Companies Acts; and
    - (b) specifying a standard style or format for the name of a company for the purposes of registration. 15
  - (2) The regulations may prohibit the use of specified characters, signs or symbols when appearing in a specified position (in particular, at the beginning of a name).
  - (3) A company may not be registered under the Companies Acts by a name that consists of or includes anything that is not permitted in accordance with regulations under this section. 20
  - (4) Regulations under this section are subject to negative resolution procedure.

**CHAPTER 2**

INDICATIONS OF COMPANY TYPE OR LEGAL FORM 25

*Required indications for limited companies*

- 59 Public limited companies**
- (1) The name of a limited company that is a public company must end with “public limited company” or “p.l.c.”.
  - (2) In the case of a Welsh company, its name may instead end with “cwmni cyfyngedig cyhoeddus” or “c.c.c.”. 30
  - (3) This section does not apply to community interest companies (but see section 33(3) and (4) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)).
- 60 Private limited companies** 35
- (1) The name of a limited company that is a private company must end with “limited” or “ltd.”.

- (2) In the case of a Welsh company, its name may instead end with “cyfyngedig” or “cyf.”
- (3) Certain companies are exempt from this requirement (see section 61).
- (4) This section does not apply to community interest companies (but see section 33(1) and (2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)). 5

**61 Exemption from requirement as to use of “limited”**

- (1) A private company is exempt from section 60 (requirement to have name ending with “limited” or permitted alternative) if –
  - (a) it is a charity, 10
  - (b) it is exempted from the requirement of that section by regulations made by the Secretary of State, or
  - (c) it meets the conditions specified in –
    - section 62 (continuation of existing exemption: companies limited by shares), or 15
    - section 63 (continuation of existing exemption: companies limited by guarantee).
- (2) The registrar may refuse to register a private limited company by a name that does not include the word “limited” (or a permitted alternative) unless a statement has been delivered to him that the company meets the conditions for exemption. 20
- (3) The registrar may accept the statement as sufficient evidence of the matters stated in it.
- (4) Regulations under this section are subject to negative resolution procedure.

**62 Continuation of existing exemption: companies limited by shares 25**

- (1) This section applies to a private company limited by shares –
  - (a) that on 25th February 1982 –
    - (i) was registered in Great Britain, and
    - (ii) had a name that, by virtue of a licence under section 19 of the Companies Act 1948 (c. 38) (or corresponding earlier legislation), did not include the word “limited” or any of the permitted alternatives, or 30
  - (b) that on 30th June 1983 –
    - (i) was registered in Northern Ireland, and
    - (ii) had a name that, by virtue of a licence under section 19 of the Companies Act (Northern Ireland) 1960 (c. 22 (N.I.)) (or corresponding earlier legislation), did not include the word “limited” or any of the permitted alternatives. 35
- (2) A company to which this section applies is exempt from section 60 (requirement to have name ending with “limited” or permitted alternative) so long as –
  - (a) it continues to meet the following two conditions, and
  - (b) it does not change its name. 40

- (3) The first condition is that the objects of the company are the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects.
- (4) The second condition is that the company’s articles –
- (a) require its income to be applied in promoting its objects, 5
  - (b) prohibit the payment of dividends, or any return of capital, to its members, and
  - (c) require all the assets that would otherwise be available to its members generally to be transferred on its winding up either –
    - (i) to another body with objects similar to its own, or 10
    - (ii) to another body the objects of which are the promotion of charity and anything incidental or conducive thereto, (whether or not the body is a member of the company).

### **63 Continuation of existing exemption: companies limited by guarantee**

- (1) A private company limited by guarantee that immediately before the commencement of this Part – 15
- (a) was exempt by virtue of section 30 of the Companies Act 1985 (c. 6) or Article 40 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) from the requirement to have a name including the word “limited” or a permitted alternative, and 20
  - (b) had a name that did not include the word “limited” or any of the permitted alternatives,
- is exempt from section 60 (requirement to have name ending with “limited” or permitted alternative) so long as it continues to meet the following two conditions and does not change its name. 25
- (2) The first condition is that the objects of the company are the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects.
- (3) The second condition is that the company’s articles –
- (a) require its income to be applied in promoting its objects, 30
  - (b) prohibit the payment of dividends to its members, and
  - (c) require all the assets that would otherwise be available to its members generally to be transferred on its winding up either –
    - (i) to another body with objects similar to its own, or
    - (ii) to another body the objects of which are the promotion of charity and anything incidental or conducive thereto, 35
 (whether or not the body is a member of the company).

### **64 Exempt company: restriction on alteration of articles**

- (1) A private company –
- (a) that is exempt under section 62 or 63 from the requirement to use “limited” (or a permitted alternative) as part of its name, and 40
  - (b) whose name does not include “limited” or any of the permitted alternatives,
- must not alter its articles so that it ceases to comply with the conditions for exemption under that section. 45



- (2) If subsection (1) above is contravened an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, to a daily default fine not exceeding one-tenth of level 5 on the standard scale. 5
- (4) Where immediately before the commencement of this section –
- (a) a company was exempt by virtue of section 30 of the Companies Act 1985 (c. 6) or Article 40 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) from the requirement to have a name including the word “limited” (or a permitted alternative), and 10
  - (b) the company’s memorandum or articles contained provision preventing an alteration of them without the approval of – 15
    - (i) the Board of Trade or a Northern Ireland department (or any other department or Minister), or
    - (ii) the Charity Commission,
- that provision, and any condition of any such licence as is mentioned in section 62(1)(a)(ii) or (b)(ii) requiring such provision, shall cease to have effect. 20
- This does not apply if, or to the extent that, the provision is required by or under any other enactment.
- (5) It is hereby declared that any such provision as is mentioned in subsection (4)(a) formerly contained in a company’s memorandum was at all material times capable, with the appropriate approval, of being altered or removed under section 17 of the Companies Act 1985 or Article 28 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (or corresponding earlier enactments). 25

**65 Power to direct change of name in case of company ceasing to be entitled to exemption 30**

- (1) If it appears to the Secretary of State that a company whose name does not include “limited” or any of the permitted alternatives –
- (a) has ceased to be entitled to exemption under section 61(1)(a) or (b), or
  - (b) in the case of a company within section 62 or 63 (which impose conditions as to the objects and articles of the company) – 35
    - (i) has carried on any business other than the promotion of any of the objects mentioned in subsection (3) of section 62 or, as the case may be, subsection (2) of section 63, or
    - (ii) has acted inconsistently with the provision required by subsection (4)(a) or (b) of section 62 or, as the case may be, subsection (3)(a) or (b) of section 63, 40
- the Secretary of State may direct the company to change its name so that it ends with “limited” or one of the permitted alternatives.
- (2) The direction must be in writing and must specify the period within which the company is to change its name. 45
- (3) A change of name in order to comply with a direction under this section may be made by resolution of the directors.

This is without prejudice to any other method of changing the company’s name.

- (4) Where a resolution of the directors is passed in accordance with subsection (3), the company must give notice to the registrar of the change.  
 Sections 80 and 81 apply as regards the registration and effect of the change. 5
- (5) If the company fails to comply with a direction under this section an offence is committed by –  
 (a) the company, and  
 (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, to a daily default fine not exceeding one-tenth of level 5 on the standard scale. 10
- (7) A company that has been directed to change its name under this section may not, without the approval of the Secretary of State, subsequently change its name so that it does not include “limited” or one of the permitted alternatives. This does not apply to a change of name on re-registration or on conversion to a community interest company. 15

*Inappropriate use of indications of company type or legal form*

- 66 Inappropriate use of indications of company type or legal form 20**
- (1) The Secretary of State may make provision by regulations prohibiting the use in a company name of specified words, expressions or other indications –  
 (a) that are associated with a particular type of company or form of organisation, or  
 (b) that are similar to words, expressions or other indications associated with a particular type of company or form of organisation. 25
- (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 company’s name;  
 (b) in conjunction with, or otherwise than in conjunction with, such other words, expressions or indications as may be specified. 30
- (3) A company must not be registered under the Companies Acts by a name that consists of or includes anything prohibited by regulations under this section.
- (4) In this section “specified” means specified in the regulations. 35
- (5) Regulations under this section are subject to negative resolution procedure.

## CHAPTER 3

### SIMILARITY TO OTHER NAMES

#### *Similarity to other name on registrar’s index*

#### **67 Name not to be the same as another in the index**

- (1) A company must not be registered under this Act by a name that is the same as another name appearing in the registrar’s index of company names. 5
- (2) The Secretary of State may make provision by regulations supplementing this section.
- (3) The regulations may make provision –
  - (a) as to matters that are to be disregarded, and 10
  - (b) as to words, expressions, signs or symbols that are, or are not, to be regarded as the same,  
for the purposes of this section.
- (4) The regulations may provide –
  - (a) that registration by a name that would otherwise be prohibited under this section is permitted – 15
    - (i) in specified circumstances, or
    - (ii) with specified consent, and
  - (b) that if those circumstances obtain or that consent is given at the time a company is registered by a name, a subsequent change of circumstances or withdrawal of consent does not affect the registration. 20
- (5) Regulations under this section are subject to negative resolution procedure.

#### **68 Power to direct change of name in case of similarity to existing name**

- (1) The Secretary of State may direct a company to change its name if it has been registered in a name that is the same as or, in the opinion of the Secretary of State, too like – 25
  - (a) a name appearing at the time of the registration in the registrar’s index of company names, or
  - (b) a name that should have appeared in that index at that time.
- (2) The Secretary of State may make provision by regulations supplementing this section. 30
- (3) The regulations may make provision –
  - (a) as to matters that are to be disregarded, and
  - (b) as to words, expressions, signs or symbols that are, or are not, to be regarded as the same, 35  
for the purposes of this section.
- (4) The regulations may provide –
  - (a) that no direction is to be given under this section in respect of a name –
    - (i) in specified circumstances, or
    - (ii) if specified consent is given, and 40

- (b) that a subsequent change of circumstances or withdrawal of consent does not give rise to grounds for a direction under this section.
- (5) Regulations under this section are subject to negative resolution procedure.

## 69 Direction to change name: supplementary provisions

- (1) The following provisions have effect in relation to a direction under section 68 (power to direct change of name in case of similarity to existing name). 5
- (2) Any such direction –
  - (a) must be given within twelve months of the company’s registration by the name in question, and
  - (b) must specify the period within which the company is to change its name. 10
- (3) The Secretary of State may by a further direction extend that period. Any such direction must be given before the end of the period for the time being specified.
- (4) If a company fails to comply with the direction, an offence is committed by – 15
  - (a) the company, and
  - (b) every officer of the company who is in default.
 For this purpose a shadow director is treated as an officer of the company.
- (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

### *Similarity to other name in which person has goodwill*

## 70 Objection to company’s registered name

- (1) A person (“the applicant”) may object to a company’s registered name on the ground – 25
  - (a) that it is the same as a name associated with the applicant in which he has goodwill, or
  - (b) that it is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company and the applicant. 30
- (2) The objection must be made by application to a company names adjudicator (see section 71).
- (3) The company concerned shall be the primary respondent to the application. Any of its members or directors may be joined as respondents. 35
- (4) If the ground specified in subsection (1)(a) or (b) is established, it is for the respondents to show –
  - (a) that the name was registered before the commencement of the activities on which the applicant relies to show goodwill; or
  - (b) that the company – 40
    - (i) is operating under the name, or

- (ii) is proposing to do so and has incurred substantial start-up costs in preparation, or
  - (iii) was formerly operating under the name and is now dormant;  
or
  - (c) that the name was registered in the ordinary course of a company formation business and the company is available for sale to the applicant on the standard terms of that business; or 5
  - (d) that the name was adopted in good faith; or
  - (e) that the interests of the applicant are not adversely affected to any significant extent. 10
- If none of those is shown, the objection shall be upheld.
- (5) If the facts mentioned in subsection (4)(a), (b) or (c) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name. 15
  - (6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.
  - (7) In this section “goodwill” includes reputation of any description.

## 71 Company names adjudicators

- (1) The Secretary of State shall appoint persons to be company names adjudicators. 20
- (2) The persons appointed must have such legal or other experience as, in the Secretary of State’s opinion, makes them suitable for appointment.
- (3) An adjudicator –
  - (a) holds office in accordance with the terms of his appointment, 25
  - (b) is eligible for re-appointment when his term of office ends,
  - (c) may resign at any time by notice in writing given to the Secretary of State, and
  - (d) may be dismissed by the Secretary of State on the ground of incapacity or misconduct. 30
- (4) One of the adjudicators shall be appointed Chief Adjudicator. He shall perform such functions as the Secretary of State may assign to him.
- (5) The other adjudicators shall undertake such duties as the Chief Adjudicator may determine.
- (6) The Secretary of State may – 35
  - (a) appoint staff for the adjudicators;
  - (b) pay remuneration and expenses to the adjudicators and their staff;
  - (c) defray other costs arising in relation to the performance by the adjudicators of their functions;
  - (d) compensate persons for ceasing to be adjudicators. 40

## 72 Procedural rules

- (1) The Secretary of State may make rules about proceedings before a company names adjudicator.

- 
- (2) The rules may, in particular, make provision –
- (a) as to how an application is to be made and the form and content of an application or other documents;
  - (b) for fees to be charged;
  - (c) about the service of documents and the consequences of failure to serve them; 5
  - (d) as to the form and manner in which evidence is to be given;
  - (e) for circumstances in which hearings are required and those in which they are not;
  - (f) for cases to be heard by more than one adjudicator; 10
  - (g) setting time limits for anything required to be done in connection with the proceedings (and allowing for such limits to be extended, even if they have expired);
  - (h) enabling the adjudicator to strike out an application, or any defence, in whole or in part – 15
    - (i) on the ground that it is vexatious, has no reasonable prospect of success or is otherwise misconceived, or
    - (ii) for failure to comply with the requirements of the rules;
  - (i) conferring power to order security for costs (in Scotland, caution for expenses); 20
  - (j) as to how far proceedings are to be held in public;
  - (k) requiring one party to bear the costs (in Scotland, expenses) of another and as to the taxing (or settling) the amount of such costs (or expenses).
- (3) The rules may confer on the Chief Adjudicator power to determine any matter that could be the subject of provision in the rules. 25
- (4) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **73 Order requiring name to be changed**

- (1) If an application under section 70 is upheld, the adjudicator shall make an order – 30
- (a) requiring the respondent company to change its name to one that is not an offending name, and
  - (b) requiring all the respondents – 35
    - (i) to take all such steps as are within their power to make, or facilitate the making, of that change, and
    - (ii) not to cause or permit any steps to be taken calculated to result in another company being registered with a name that is an offending name.
- (2) An “offending name” means a name that, by reason of its similarity to the name associated with the applicant in which he claims goodwill, would be likely – 40
- (a) to be the subject of a direction under section 68 (power of registrar to direct change of name), or
  - (b) to give rise to a further application under section 70.
- (3) The order must specify a date by which the respondent company’s name is to be changed and may be enforced – 45

(a)	in England and Wales or Northern Ireland, in the same way as an order of the High Court;	
(b)	in Scotland, in the same way as a decree of the Court of Session.	
(4)	If the respondent company’s name is not changed in accordance with the order by the specified date, the adjudicator may determine a new name for the company.	5
(5)	If the adjudicator determines a new name for the respondent company he must give notice of his determination –	
(a)	to the applicant,	
(b)	to the respondents, and	10
(c)	to the registrar.	
(6)	For the purposes of this section a company’s name is changed when the change takes effect in accordance with section 81(1) (on the issue of the new certification of incorporation).	
<b>74</b>	<b>Appeal from adjudicator’s decision</b>	<b>15</b>
(1)	An appeal lies to the court from any decision of a company names adjudicator to uphold or dismiss an application under section 70.	
(2)	Notice of appeal against a decision upholding an application must be given before the date specified in the adjudicator’s order by which the respondent company’s name is to be changed.	20
(3)	If notice of appeal is given against a decision upholding an application, the effect of the adjudicator’s order is suspended.	
(4)	If on appeal the court –	
(a)	affirms the decision of the adjudicator to uphold the application, or	
(b)	reverses the decision of the adjudicator to dismiss the application,	25
	the court may (as the case may require) specify the date by which the adjudicator’s order is to be complied with, remit the matter to the adjudicator or make any order that the adjudicator might have made.	
<b>CHAPTER 4</b>		
OTHER POWERS OF THE SECRETARY OF STATE		
		30
<b>75</b>	<b>Provision of misleading information etc</b>	
(1)	If it appears to the Secretary of State –	
(a)	that misleading information has been given for the purposes of a company’s registration by a particular name, or	
(b)	that an undertaking or assurance has been given for that purpose and has not been fulfilled,	35
	the Secretary of State may direct the company to change its name.	
(2)	Any direction under this section –	
(a)	must be given within five years of the company’s registration by that name, and	40
(b)	must specify the period within which the company is to change its name.	

- (3) The Secretary of State may by a further direction extend the period within which the company is to change its name.  
 Any such direction must be given before the end of the period for the time being specified.
- (4) A direction under this section must be in writing. 5
- (5) If a company fails to comply with a direction under this section, an offence is committed by –  
 (a) the company, and  
 (b) every officer of the company who is in default.  
 For this purpose a shadow director is treated as an officer of the company. 10
- (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.
- 76 Misleading indication of activities 15**
- (1) If in the opinion of the Secretary of State the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the Secretary of State may direct the company to change its name.
- (2) The direction must be complied with within a period of six weeks from the date of the direction or such longer period as the Secretary of State may think fit to allow.  
 This does not apply if an application is duly made to the court under the following provisions. 20
- (3) The company may apply to the court to set the direction aside. 25  
 The application must be made within the period of three weeks from the date of the direction.
- (4) The court may set the direction aside or confirm it.  
 If the direction is confirmed, the court shall specify the period within which the direction is to be complied with. 30
- (5) If a company fails to comply with a direction under this section, an offence is committed by –  
 (a) the company, and  
 (b) every officer of the company who is in default.  
 For this purpose a shadow director is treated as an officer of the company. 35
- (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.



## CHAPTER 5

### CHANGE OF NAME

#### 77 Change of name

- (1) A company may change its name –
  - (a) by special resolution (see section 78), or 5
  - (b) by other means provided for by the company’s articles (see section 79).
- (2) The name of a company may also be changed –
  - (a) by resolution of the directors acting under section 65 (change of name to comply with direction of Secretary of State under that section); or
  - (b) by order under section 73 (order of adjudicator following objection to company name). 10

#### 78 Change of name by special resolution

- (1) Where a change of name has been agreed to by a company by special resolution, the company must give notice to the registrar.  
This is in addition to the obligation to forward a copy of the resolution to the registrar. 15
- (2) Where a change of name by special resolution is conditional on the occurrence of an event, the notice given to the registrar of the change must –
  - (a) specify that the change is conditional, and
  - (b) state whether the event has occurred. 20
- (3) If the notice states that the event has not occurred –
  - (a) the registrar is not required to act under section 80 (registration and issue of new certificate of incorporation) until further notice,
  - (b) when the event occurs, the company must give notice to the registrar stating that it has occurred, and 25
  - (c) the registrar may rely on the statement as sufficient evidence of the matters stated in it.

#### 79 Change of name by means provided for in company’s articles

- (1) Where a change of a company’s name has been made by other means provided for by its articles – 30
  - (a) the company must give notice to the registrar, and
  - (b) the notice must be accompanied by a statement that the change of name has been made by means provided for by the company’s articles.
- (2) The registrar may rely on the statement as sufficient evidence of the matters stated in it. 35

#### 80 Change of name: registration and issue of new certificate of incorporation

- (1) This section applies where the registrar receives notice of a change of a company’s name.
- (2) If the registrar is satisfied –
  - (a) that the new name complies with the requirements of this Part, and 40

(b) that the requirements of the Companies Acts, and any relevant requirements of the company’s articles, with respect to a change of name are complied with,  
 the registrar must enter the new name on the register in place of the former name. 5

- (3) On the registration of the new name, the registrar must issue a certificate of incorporation altered to meet the circumstances of the case.

## **81 Change of name: effect**

- (1) A change of a company’s name has effect from the date on which the new certificate of incorporation is issued. 10
- (2) The change does not affect any rights or obligations of the company or render defective any legal proceedings by or against it.
- (3) Any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name. 15

## **CHAPTER 6**

### TRADING DISCLOSURES

## **82 Requirement to disclose company name etc**

- (1) The Secretary of State may by regulations make provision requiring companies – 20
- (a) to display specified information in specified locations,
- (b) to state specified information in specified descriptions of document or communication, and
- (c) to provide specified information on request to those they deal with in the course of their business. 25
- (2) The regulations –
- (a) must in every case require disclosure of the name of the company, and
- (b) may make provision as to the manner in which any specified information is to be displayed, stated or provided.
- (3) The regulations may provide that, for the purposes of any requirement to disclose a company’s name, any variation between a word or words required to be part of the name and a permitted abbreviation of that word or those words (or vice versa) shall be disregarded. 30
- (4) In this section “specified” means specified in the regulations.
- (5) Regulations under this section are subject to affirmative resolution procedure. 35

## **83 Civil consequences of failure to make required disclosure**

- (1) This section applies to any legal proceedings brought by a company to which section 82 applies (requirement to disclose company name etc) to enforce a right arising out of a contract made in the course of a business in respect of

which the company was, at the time the contract was made, in breach of regulations under that section.

- (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 regulations, or 5
  - (b) that he has suffered some financial loss in connection with the contract by reason of the claimant’s (pursuer’s) breach of the regulations, unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue. 10
- (3) 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.

#### **84 Criminal consequences of failure to make required disclosures**

- (1) Regulations under section 82 may provide – 15
- (a) that where a company fails, without reasonable excuse, to comply with any specified requirement of regulations under that section an offence is committed by –
    - (i) the company, and
    - (ii) every officer of the company who is in default; 20
  - (b) that a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, in the case of continued contravention, to a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (2) In subsection (1)(a) “specified” means specified in the regulations. 25

#### **85 Minor variations in form of name to be left out of account**

- (1) For the purposes of this Chapter, in considering a company’s name no account is to be taken of –
- (a) whether upper or lower case characters (or a combination of the two) are used, 30
  - (b) whether diacritical marks or punctuation are present or absent,
  - (c) whether the name is in the same format or style as is specified under section 58(1)(b) for the purposes of registration, provided there is no real likelihood of names differing only in those respects being taken to be different names. 35
- (2) This does not affect the operation of regulations under section 58(1)(a) permitting only specified characters, diacritical marks or punctuation.

**PART 6**

## A COMPANY'S REGISTERED OFFICE

*General***86 A company's registered office**

A company must at all times have a registered office to which all communications and notices may be addressed. 5

**87 Change of address of registered office**

- (1) A company may change the address of its registered office by giving notice to the registrar.
- (2) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at the address previously registered. 10
- (3) For the purposes of any duty of a company –
  - (a) to keep available for inspection at its registered office any register, index or other document, or 15
  - (b) to mention the address of its registered office in any document,
 a company that has given notice to the registrar of a change in the address of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine. 20
- (4) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (3)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the address of its registered office, but –
  - (a) resumes performance of that duty at other premises as soon as practicable, and 25
  - (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,
 it is not to be treated as having failed to comply with that duty.

*Welsh companies* 30**88 Welsh companies**

- (1) In the Companies Acts a “Welsh company” means a company as to which it is stated in the register that its registered office is to be situated in Wales.
- (2) A company –
  - (a) whose registered office is in Wales, and 35
  - (b) as to which it is stated in the register that its registered office is to be situated in England and Wales,
 may by special resolution require the register to be amended so that it states that the company's registered office is to be situated in Wales.
- (3) A company – 40

- (a) whose registered office is in Wales, and
  - (b) as to which it is stated in the register that its registered office is to be situated in Wales,
- may by special resolution require the register to be amended so that it states that the company’s registered office is to be situated in England and Wales. 5
- (4) Where a company passes a resolution under this section it must give notice to the registrar, who shall –
- (a) amend the register accordingly, and
  - (b) issue a new certificate of incorporation altered to meet the circumstances of the case. 10

## PART 7

### RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY’S STATUS

#### *Introductory*

#### **89 Alteration of status by re-registration**

- A company may by re-registration under this Part alter its status – 15
- (a) from a private company to a public company (see sections 90 to 96);
  - (b) from a public company to a private company (see sections 97 to 101);
  - (c) from a private limited company to an unlimited company (see sections 102 to 104);
  - (d) from an unlimited private company to a limited company (see sections 105 to 107); 20
  - (e) from a public company to an unlimited private company (see sections 108 to 110).

#### *Private company becoming public*

#### **90 Re-registration of private company as public**

- (1) A private company (whether limited or unlimited) may be re-registered as a public company limited by shares if – 25
- (a) a special resolution that it should be so re-registered is passed,
  - (b) the conditions specified below are met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 94, together with – 30
    - (i) the other documents required by that section, and
    - (ii) a statement of compliance.
- (2) The conditions are –
- (a) that the company has a share capital; 35
  - (b) that the requirements of section 91 are met as regards its share capital;
  - (c) that the requirements of section 92 are met as regards its net assets;
  - (d) if section 93 applies (recent allotment of shares for non-cash consideration), the requirements of that section are met; and
  - (e) that the company has not previously been re-registered as unlimited. 40
- (3) The company must make such changes –

- (a) in its name, and
  - (b) in its articles,
- as are necessary in connection with its becoming a public company.

- (4) If the company is unlimited it must also make such changes in its articles as are necessary in connection with its becoming a company limited by shares. 5

## 91 Requirements as to share capital

- (1) The following requirements must be met at the time the special resolution is passed that the company should be re-registered as a public company –
- (a) the nominal value of the company's allotted share capital must be not less than the authorised minimum; 10
  - (b) each of the company's allotted shares must be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;
  - (c) if any shares in the company or any premium on them have been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services (whether for the company or any other person), the undertaking must have been performed or otherwise discharged; 15
  - (d) if shares have been allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, and the consideration for the allotment consists of or includes an undertaking to the company (other than one to which paragraph (c) applies), then either –
    - (i) the undertaking must have been performed or otherwise discharged, or 25
    - (ii) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within five years from the time the special resolution is passed.
- (2) For the purpose of determining whether the requirements in subsection (1)(b), (c) and (d) are met, the following may be disregarded – 30
- (a) shares allotted –
    - (i) before 22nd June 1982 in the case of a company then registered in Great Britain, or
    - (ii) before 31st December 1984 in the case of a company then registered in Northern Ireland; 35
  - (b) shares allotted in pursuance of an employees' share scheme by reason of which the company would, but for this subsection, be precluded under subsection (1)(b) (but not otherwise) from being re-registered as a public company.
- (3) No more than one-tenth of the nominal value of the company's allotted share capital is to be disregarded under subsection (2)(a). 40  
For this purpose the allotted share capital is treated as not including shares disregarded under subsection (2)(b).
- (4) Shares disregarded under subsection (2) are treated as not forming part of the allotted share capital for the purposes of subsection (1)(a). 45
- (5) A company must not be re-registered as a public company if it appears to the registrar that –

- (a) the company has resolved to reduce its share capital,
  - (b) the reduction –
    - (i) is supported by a solvency statement in accordance with section 135B of the Companies Act 1985 (c. 6),
    - (ii) has been confirmed by an order of the court under section 137 of that Act, or
    - (iii) is made under section 587 of this Act (reduction in connection with redenomination of share capital), and
  - (c) the effect of the reduction is, or will be, that the nominal value of the company’s allotted share capital is below the authorised minimum.
- (6) In this section “the authorised minimum” has the meaning given by section 536. 10

## 92 Requirements as to net assets

- (1) A company applying to re-register as a public company must obtain –
- (a) a balance sheet prepared as at a date not more than seven months before the date on which the application is delivered to the registrar, 15
  - (b) an unqualified report by the company’s auditor on that balance sheet, and
  - (c) a written statement by the company’s auditor that in his opinion at the balance sheet date the amount of the company’s net assets was not less than the aggregate of its called-up share capital and undistributable reserves. 20
- (2) Between the balance sheet date and the date on which the application for re-registration is delivered to the registrar, there must be no change in the company’s financial position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves. 25
- (3) In subsection (1)(b) an “unqualified report” means –
- (a) if the balance sheet was prepared for a financial year of the company, a report stating without material qualification the auditor’s opinion that the balance sheet has been properly prepared in accordance with the requirements of this Act; 30
  - (b) if the balance sheet was not prepared for a financial year of the company, a report stating without material qualification the auditor’s opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been prepared for a financial year of the company. 35
- (4) For the purposes of an auditor’s report on a balance sheet that was not prepared for a financial year of the company, the provisions of this Act apply with such modifications as are necessary by reason of that fact. 40
- (5) For the purposes of subsection (3) a qualification is material unless the auditor states in his report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company’s balance sheet) whether at the balance sheet date the amount of the company’s net assets was not less than the aggregate of its called-up share capital and undistributable reserves. 45

- (6) In this Part “net assets” and “undistributable reserves” have the meanings given by section 264(2) and (3) of the Companies Act 1985 (c. 6).

### 93 Recent allotment of shares for non-cash consideration

- (1) This section applies where –
- (a) shares are allotted by the company in the period between the date as at which the balance sheet required by section 92 is prepared and the passing of the resolution that the company should re-register as a public company, and 5
  - (b) the shares are allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash. 10
- (2) The registrar shall not entertain an application by the company for re-registration as a public company unless –
- (a) the consideration for the allotment has been valued in accordance with section 108 of the Companies Act 1985 and a report with respect to the value of the consideration has been made to the company (in accordance with that section) during the six months immediately preceding the allotment, or 15
  - (b) the allotment is in connection with –
    - (i) a share exchange (see subsections (3) to (5) below), or
    - (ii) a proposed merger with another company (see subsection (6) below). 20
- (3) An allotment is in connection with a share exchange if –
- (a) the shares are allotted in connection with an arrangement under which the whole or part of the consideration for the shares allotted is provided by –
    - (i) the transfer to the company allotting the shares of shares (or shares of a particular class) in another company, or
    - (ii) the cancellation of shares (or shares of a particular class) in another company; and 25
  - (b) the allotment is open to all the holders of the shares of the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of the company’s shares of that class) to take part in the arrangement in connection with which the shares are allotted. 30
- (4) In determining whether a person is a holder of shares for the purposes of subsection (3), there shall be disregarded – 35
- (a) shares held by, or by a nominee of, the company allotting the shares;
  - (b) shares held by, or by a nominee of –
    - (i) the holding company of the company allotting the shares,
    - (ii) a subsidiary of the company allotting the shares, or 40
    - (iii) a subsidiary of the holding company of the company allotting the shares.
- (5) It is immaterial, for the purposes of deciding whether an allotment is in connection with a share exchange, whether or not the arrangement in connection with which the shares are allotted involves the issue to the company allotting the shares of shares (or shares of a particular class) in the other company. 45



- (6) There is a proposed merger with another company if one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of its shares or other securities to shareholders of the other (whether or not accompanied by a cash payment).  
“Another company” includes any body corporate. 5
- (7) For the purposes of this section –
- (a) the consideration for an allotment does not include any amount standing to the credit of any of the company’s reserve accounts, or of its profit and loss account, that has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares; and 10
  - (b) “arrangement” means any agreement, scheme or arrangement, including an arrangement sanctioned in accordance with –
    - (i) section 425 of the Companies Act 1985 (c. 6) (company compromise with creditors and members), or
    - (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (liquidator in winding up accepting shares as consideration for sale of company’s property). 15

#### 94 Application and accompanying documents

- (1) An application for re-registration as a public company must contain – 20
- (a) a statement of the company’s proposed name on re-registration; and
  - (b) a statement of the company’s proposed secretary (see section 95).
- (2) The application must be accompanied by –
- (a) a copy of the special resolution that the company should re-register as a public company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3); 25
  - (b) a copy of the company’s articles as proposed to be amended;
  - (c) a copy of the balance sheet and other documents referred to in section 92(1); and
  - (d) if section 93 applies (recent allotment of shares for non-cash consideration), a copy of the valuation report (if any) under subsection (2)(a) of that section. 30
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a public company have been complied with. 35
- (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a public company.

#### 95 Statement of proposed secretary

- (1) The statement of the company’s proposed secretary must contain the required particulars of the person who is or the persons who are to be (or continue to be) the secretary or joint secretaries of the company. 40
- (2) The required particulars are the particulars that will be required to be stated in the company’s register of secretaries (see sections 256 to 258).
- (3) The statement must also contain a consent by the person named as secretary, or each of the persons named as joint secretaries, to act in the relevant capacity. 45

If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

## 96 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration as a public company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly. 5
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued. 10
- (4) On the issue of the certificate –
  - (a) the company by virtue of the issue of the certificate becomes a public company,
  - (b) the changes in the company's name and articles take effect, and
  - (c) the person or persons named in the statement under section 95 (statement of proposed secretary) as secretary or joint secretary of the company are deemed to have been appointed to that office. 15
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

*Public company becoming private* 20

## 97 Re-registration of public company as private limited company

- (1) A public company may be re-registered as a private limited company if –
  - (a) a special resolution that it should be so re-registered is passed,
  - (b) the conditions specified below are met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 100, together with –
    - (i) the other documents required by that section, and
    - (ii) a statement of compliance. 25
- (2) The conditions are that –
  - (a) the period during which an application for cancellation of the resolution under section 98 may be made has expired without any such application having been made, or
  - (b) where such an application has been made –
    - (i) the application has been withdrawn, or
    - (ii) an order has been made confirming the resolution and a copy of that order has been delivered to the registrar. 30
- (3) The company must make such changes –
  - (a) in its name, and
  - (b) in its articles,
 as are necessary in connection with its becoming a private company limited by shares or, as the case may be, by guarantee. 40

## 98 Application to court to cancel resolution

- (1) Where a special resolution by a public company to be re-registered as a private limited company has been passed, an application to the court for the cancellation of the resolution may be made –
  - (a) by the holders of not less in the aggregate than 5% in nominal value of the company’s issued share capital or any class of the company’s issued share capital (disregarding any shares held by the company as treasury shares); 5
  - (b) if the company is not limited by shares, by not less than 5% of its members; or 10
  - (c) by not less than 50 of the company’s members;  
but not by a person who has consented to or voted in favour of the resolution.
- (2) The application must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint for the purpose. 15
- (3) On the hearing of the application the court shall make an order either cancelling or confirming the resolution.
- (4) The court may –
  - (a) make that order on such terms and conditions as it thinks fit,
  - (b) if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and 20
  - (c) give such directions, and make such orders, as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (5) The court’s order may, if the court thinks fit – 25
  - (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company’s capital; and
  - (b) make such alteration in the company’s articles as may be required in consequence of that provision. 30
- (6) The court’s order may, if the court thinks fit, require the company not to make any, or any specified, alterations in its articles without the leave of the court.

## 99 Notice to registrar of court application or order

- (1) If an application is made under section 98 (application for cancellation of resolution) the company must immediately give notice to the registrar. 35
- (2) Within 15 days of the making of the court’s order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (3) If a company fails to comply with subsection (1) or (2) an offence is committed by – 40
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for

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

### 100 Application and accompanying documents

- (1) An application for re-registration as a private limited company must contain a statement of the company's proposed name on re-registration. 5
- (2) The application must be accompanied by –
  - (a) a copy of the resolution that the company should re-register as a private limited company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3); and
  - (b) a copy of the company's articles as proposed to be amended. 10
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a private limited company have been complied with.
- (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private limited company. 15

### 101 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration as a private limited company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case. 20
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate –
  - (a) the company by virtue of the issue of the certificate becomes a private limited company, and
  - (b) the changes in the company's name and articles take effect. 25
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

*Private limited company becoming unlimited* 30

### 102 Re-registration of private limited company as unlimited

- (1) A private limited company may be re-registered as an unlimited company if –
  - (a) all the members of the company have assented to its being so re-registered,
  - (b) the conditions specified below are met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 103, together with –
    - (i) the other documents required by that section, and
    - (ii) a statement of compliance. 35
- (2) The conditions are that the company has not previously been re-registered – 40

- (a) as limited (having previously been unlimited), or
  - (b) as unlimited (having previously been limited).
- (3) The company must make such changes in its name and its articles –
- (a) as are necessary in connection with its becoming an unlimited company; and 5
  - (b) if it is to have a share capital, as are necessary in connection with its becoming an unlimited company having a share capital.
- (4) For the purposes of this section –
- (a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company’s becoming unlimited; and 10
  - (b) the personal representative of a deceased member of the company may assent on behalf of the deceased.
- (5) In subsection (4)(a), “a trustee in bankruptcy of a member of the company” includes – 15
- (a) a permanent trustee or an interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) on the sequestrated estate of a member of the company;
  - (b) a trustee under a protected trustee deed (within the meaning of the Bankruptcy (Scotland) Act 1985) granted by a member of the company. 20

### 103 Application and accompanying documents

- (1) An application for re-registration as an unlimited company must contain a statement of the company’s proposed name on re-registration.
- (2) The application must be accompanied by –
- (a) the prescribed form of assent to the company’s being registered as an unlimited company, subscribed by or on behalf of all the members of the company; 25
  - (b) if the company is to have a share capital –
    - (i) a statement of initial shareholdings, and
    - (ii) a statement of capital; and 30
  - (c) a copy of the company’s articles as proposed to be amended.
- For the form of the statements required by paragraph (b), see section 111.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited company have been complied with. 35
- (4) The statement must contain a statement by the directors of the company –
- (a) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and
  - (b) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do so. 40
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited company.

- (6) References in this section to subscription include, in relation to a document in electronic form, authentication in such manner as the registrar may require.

#### 104 Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration of a private limited company as an unlimited company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly. 5
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued. 10
- (4) On the issue of the certificate –
- (a) the company by virtue of the issue of the certificate becomes an unlimited company, and
  - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with. 15

#### *Unlimited private company becoming limited*

#### 105 Re-registration of unlimited company as limited

- (1) An unlimited company may be re-registered as a private limited company if –
- (a) a special resolution that it should be so re-registered is passed, 20
  - (b) the condition specified below is met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 106, together with –
- (i) the other documents required by that section, and
  - (ii) a statement of compliance. 25
- (2) The condition is that the company has not previously been re-registered as unlimited.
- (3) The special resolution must state whether the company is to be limited by shares or by guarantee.
- (4) The company must make such changes – 30
- (a) in its name, and
  - (b) in its articles,
- as are necessary in connection with its becoming a company limited by shares or, as the case may be, by guarantee.

#### 106 Application and accompanying documents 35

- (1) An application for re-registration as a limited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by –

- (a) a copy of the resolution that the company should re-register as a private limited company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3);
  - (b) if the company is to be limited by shares and has not previously had a share capital – 5
    - (i) a statement of initial shareholdings, and
    - (ii) a statement of capital;
  - (c) if the company is to be limited by guarantee, a statement of guarantee;
  - (d) a copy of the company’s articles as proposed to be amended.
- For the form of the statements required by paragraph (b) and (c), see section 111. 10
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a limited company have been complied with.
  - (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a limited company. 15

#### **107 Issue of certificate of incorporation on re-registration**

- (1) If on an application for re-registration of an unlimited company as a limited company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly. 20
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is so issued.
- (4) On the issue of the certificate – 25
  - (a) the company by virtue of the issue of the certificate becomes a limited company, and
  - (b) the changes in the company’s name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with. 30

#### *Public company becoming private and unlimited*

#### **108 Re-registration of public company as private and unlimited**

- (1) A public company limited by shares may be re-registered as an unlimited private company with a share capital if – 35
  - (a) all the members of the company have assented to its being so re-registered,
  - (b) the condition specified below is met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 109, together with –
    - (i) the other documents required by that section, and 40
    - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered –

- (a) as limited, or
  - (b) as unlimited.
- (3) The company must make such changes—
- (a) in its name, and
  - (b) in its articles,
- as are necessary in connection with its becoming an unlimited private company. 5
- (4) For the purposes of this section—
- (a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company’s re-registration; and 10
  - (b) the personal representative of a deceased member of the company may assent on behalf of the deceased.
- (5) In subsection (4)(a), “a trustee in bankruptcy of a member of the company” includes— 15
- (a) a permanent trustee or an interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) on the sequestrated estate of a member of the company;
  - (b) a trustee under a protected trustee deed (within the meaning of the Bankruptcy (Scotland) Act 1985) granted by a member of the company. 20

## 109 Application and accompanying documents

- (1) An application for re-registration of a public company as an unlimited private company must contain a statement of the company’s proposed name on re-registration.
- (2) The application must be accompanied by— 25
- (a) the prescribed form of assent to the company’s being registered as an unlimited company, subscribed by or on behalf of all the members of the company, and
  - (b) a copy of the company’s articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited private company have been complied with. 30
- (4) The statement must contain a statement by the directors of the company—
- (a) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and 35
  - (b) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do so.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited private company. 40
- (6) References in this section to subscription include, in relation to a document in electronic form, authentication in such manner as the registrar may require.



**110 Issue of certificate of incorporation on re-registration**

- (1) If on an application for re-registration of a public company as an unlimited private company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case. 5
- (3) The certificate must state that it is issued on re-registration and the date on which it is so issued.
- (4) On the issue of the certificate –
  - (a) the company by virtue of the issue of the certificate becomes an unlimited private company, and 10
  - (b) the changes in the company’s name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

*Supplementary* 15

**111 Form of statements required**

- (1) This section makes provision about the form of the statements required by – section 103(2)(b) (company re-registering as unlimited); or section 106(2)(b) and (c) (company re-registering as limited).
- (2) The statement of initial shareholdings required to be delivered in the case of a company that is to have a share capital must state with respect to each member of the company –
  - (a) the number and nominal value of the shares to be allotted to him on re-registration, and
  - (b) the amount (if any) payable in respect of each share on re-registration, whether on account of the nominal value or by way of a premium. 25
- (3) The statement of share capital required to be delivered in the case of a company that is to have a share capital must state with respect to the company’s share capital to be allotted on re-registration –
  - (a) the total number of shares of the company, 30
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and 35
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee must state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for – 40

- (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
- (b) payment of the costs, charges and expenses of winding up, and
- (c) adjustment of the rights of the contributories among themselves, not exceeding a specified amount.

5

## PART 8

### MEMBERS OF A COMPANY

#### CHAPTER 1

##### THE MEMBERS OF A COMPANY

### 112 The members of a company 10

- (1) The subscribers of a company’s memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company. 15

#### CHAPTER 2

##### REGISTER OF MEMBERS

##### *General*

### 113 Register of members

- (1) Every company must keep a register of its members. 20
- (2) There must be entered in the register –
  - (a) the names and addresses of the members,
  - (b) the date on which each person was registered as a member, and
  - (c) the date at which any person ceased to be a member.
- (3) In the case of a company having a share capital there must be entered in the register, with the names and addresses of the members, a statement of – 25
  - (a) the shares held by each member, distinguishing each share –
    - (i) by its number (so long as the share has a number), and
    - (ii) where the company has more than one class of issued shares, by its class, 30
  - and
  - (b) the amount paid or agreed to be considered as paid on the shares of each member.
- (4) If the company has converted any of its shares into stock, and given notice of the conversion to the registrar, the register of members must show the amount and class of stock held by each member instead of the amount of shares and the particulars relating to shares specified above. 35

- (5) In the case of joint holders of shares or stock in a company the company's register of members must state the names of each joint holder.  
In other respects joint holders are regarded for the purposes of this Chapter as a single member (so that the register must show a single address).
- (6) In the case of a company that does not have a share capital but has more than one class of members, there must be entered in the register, with the names and addresses of the members, a statement of the class to which each member belongs. 5
- (7) If a company makes default in complying with this section an offence is committed by – 10
- (a) the company, and
  - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale. 15

#### **114 Register to be kept available for inspection**

- (1) A company's register of members must be kept available for inspection – 20
- (a) at its registered office, or
  - (b) at another place in the part of the United Kingdom in which the company is registered.
- (2) A company must give notice to the registrar of the place where its register of members is kept available for inspection and of any change in that place.
- (3) No such notice is required if the register has, at all times since it came into existence (or, in the case of a register in existence on the relevant date, at all times since then) been kept available for inspection at the company's registered office. 25
- (4) The relevant date for the purposes of subsection (3) is – 30
- (a) 1st July 1948 in the case of a company registered in Great Britain, and
  - (b) 1st April 1961 in the case of a company registered in Northern Ireland.
- (5) If a company makes default for 14 days in complying with subsection (2), an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale. 35

#### **115 Index of members**

- (1) Every company having more than 50 members must keep an index of the names of the members of the company, unless the register of members is in such a form as to constitute in itself an index. 40

- 
- (2) The company must make any necessary alteration in the index within 14 days after the date on which any alteration is made in the register of members.
  - (3) The index must contain, in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.
  - (4) The index must be at all times kept available for inspection at the same place as the register of members. 5
  - (5) If default is made in complying with this section, an offence is committed by –
    - (a) the company, and
    - (b) every officer of the company who is in default.
  - (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale. 10

#### **116 Rights to inspect and request copies**

- (1) The register and the index of members' names must be open to the inspection – 15
  - (a) of any member of the company without charge, and
  - (b) of any other person on payment of such fee as may be prescribed.
- (2) Any person may require a copy of a company's register of members, or of any part of it, on payment of such fee as may be prescribed. 20
- (3) Where a company receives a request under this section, it must within five working days either –
  - (a) comply with the request, or
  - (b) apply to the court.
 If it applies to the court it must notify the person making the request. 25
- (4) If the court is satisfied that the inspection or copy is not sought for a proper purpose –
  - (a) it shall direct that the company need not comply with the request, and
  - (b) it may further order that the company's costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application. 30
- (5) If the company applies to the court but no such direction is made, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.
- (6) If an inspection required under this section is refused, or default is made in providing a copy required under this section, an offence is committed by – 35
  - (a) the company, and
  - (b) every officer of the company 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. 40

- (8) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

### 117 Information as to state of register and index

- (1) When a person inspects the register, or the company provides him with a copy of the register or any part of it, the company must inform him of the most recent date (if any) on which alterations were made to the register and there were no further alterations to be made. 5
- (2) When a person inspects the index of members' names, the company must inform him whether there is any alteration to the register that is not reflected in the index. 10
- (3) If a company fails to provide the information required under subsection (1) or (2), an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default. 15
- (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.

### 118 Removal of entries relating to former members

An entry relating to a former member of the company may be removed from the register after the expiration of ten years from the date on which he ceased to be a member. 20

#### *Special cases*

### 119 Share warrants

- (1) On the issue of a share warrant the company must –
- (a) enter in the register of members – 25
    - (i) the fact of the issue of the warrant,
    - (ii) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number, and
    - (iii) the date of the issue of the warrant, 30
  - and
  - (b) amend the register, if necessary, so that no person is named on the register as the holder of the shares specified in the warrant.
- (2) Until the warrant is surrendered, the particulars specified in subsection (1)(a) are deemed to be those required by this Act to be entered in the register of members. 35
- (3) The bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.
- (4) Subject to the company's articles, the bearer of a share warrant is entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members. 40

- (5) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares specified in it without the warrant being surrendered and cancelled.
- (6) On the surrender of a share warrant, the date of the surrender must be entered in the register. 5

## 120 Single member companies

- (1) If a limited company is formed under this Act with only one member there shall be entered in the company's register of members, with the name and address of the sole member, a statement that the company has only one member. 10
- (2) If the number of members of a limited company falls to one, or if an unlimited company with only one member becomes a limited company on re-registration, there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the sole member – 15
- (a) a statement that the company has only one member, and
- (b) the date on which the company became a company having only one member.
- (3) If the membership of a limited company increases from one to two or more members there shall upon the occurrence of that event be entered in the company's register of members, with the name and address of the person who was formerly the sole member – 20
- (a) a statement that the company has ceased to have only one member, and
- (b) the date on which that event occurred. 25
- (4) If a company makes default in complying with this section, an offence is committed by –
- (a) the company, and
- (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale. 30

## 121 Company holding its own shares as treasury shares

- (1) Where a company purchases its own shares in circumstances in which section 162A of the Companies Act 1985 (c. 6) (treasury shares) applies – 35
- (a) the requirements of section 113 above (register of members) need not be complied with if the company cancels all of the shares forthwith after the purchase, and
- (b) if the company does not cancel all of the shares forthwith after the purchase, any share that is so cancelled shall be disregarded for the purposes of that section. 40
- (2) Subject to subsection (1), where a company holds shares as treasury shares the company must be entered in the register as the member holding those shares.

*Supplementary*

**122 Power of court to rectify register**

- (1) If—
- (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or 5
  - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.
- (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved. 10
- (3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register. 15
- (4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar. 20

**123 Trusts not to be entered on register**

No notice of any trust, expressed, implied or constructive, shall be entered on the register in England and Wales or Northern Ireland, or be receivable by the registrar. 25

**124 Register to be evidence**

The register of members is *prima facie* evidence of any matters which are by this Act directed or authorised to be inserted in it.

**125 Time limit for claims arising from entry in register** 30

- (1) Liability incurred by a company—
- (a) from the making or deletion of an entry in the register of members, or
  - (b) from a failure to make or delete any such entry,
- is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred. 35
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).

## **126 Overseas branch registers**

- (1) Nothing in this Chapter affects the power of a company to keep an overseas branch register under section 362 of, and Schedule 14 to, the Companies Act 1985 (c. 6).
- (2) The Secretary of State may make provision by regulations – 5
  - (a) as to the circumstances in which a company is to be regarded as keeping a register in a particular country or territory, and
  - (b) modifying any provision of this Chapter as it applies in relation to an overseas branch register.
- (3) Regulations under this section are subject to negative resolution procedure. 10

## **CHAPTER 3**

### PROHIBITION ON SUBSIDIARY BEING MEMBER OF ITS HOLDING COMPANY

#### *General prohibition*

## **127 Prohibition on subsidiary being a member of its holding company**

- (1) Except as provided by this Chapter – 15
  - (a) a body corporate cannot be a member of a company that is its holding company, and
  - (b) any allotment or transfer of shares in a company to its subsidiary is void.
- (2) The exceptions are provided for in – 20
  - section 129 (subsidiary acting as personal representative or trustee), and
  - section 132 (subsidiary acting as authorised dealer in securities).

## **128 Shares acquired before prohibition became applicable**

- (1) Where a body corporate became a holder of shares in a company – 25
  - (a) before the relevant date, or
  - (b) on or after that date and before the commencement of this Chapter in circumstances in which the prohibition in section 23(1) of the Companies Act 1985 or Article 33(1) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (or any corresponding earlier enactment), as it then had effect, did not apply, or 30
  - (c) on or after the commencement of this Chapter in circumstances in which the prohibition in section 127 did not apply, it may continue to be a member of the company.
- (2) The relevant date for the purposes of subsection (1)(a) is – 35
  - (a) 1st July 1948 in the case of a company registered in Great Britain, and
  - (b) 1st April 1961 in the case of a company registered in Northern Ireland.
- (3) So long as it is permitted to continue as a member of a company by virtue of this section, an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company.



- (4) But, so long as the prohibition in section 127 would (apart from this section) apply, it has no right to vote in respect of the shares mentioned in subsection (1) above, or any shares allotted as mentioned in subsection (2) above, on a written resolution or at meetings of the company or of any class of its members.

*Subsidiary acting as personal representative or trustee* 5

**129 Subsidiary acting as personal representative or trustee**

- (1) The prohibition in section 127 (prohibition on subsidiary being a member of its holding company) does not apply where the subsidiary is concerned only –
- (a) as personal representative, or
  - (b) as trustee, 10
- unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.
- (2) For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded –
- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business that includes the lending or money; 15
  - (b) any interest within –
    - section 130 (interests to be disregarded: residual interest under pension scheme or employees’ share scheme), or 20
    - section 131 (interests to be disregarded: employer’s rights of recovery under pension scheme or employees’ share scheme);
  - (c) any rights that the company or subsidiary has in its capacity as trustee, including in particular –
    - (i) any right to recover its expenses or be remunerated out of the trust property, and 25
    - (ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

**130 Interests to be disregarded: residual interest under pension scheme or employees’ share scheme** 30

- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees’ share scheme, there shall be disregarded for the purposes of section 129 any residual interest that has not vested in possession.
- (2) A “residual interest” means a right of the company or subsidiary (“the residual beneficiary”) to receive any of the trust property in the event of –
- (a) all the liabilities arising under the scheme having been satisfied or provided for, or
  - (b) the residual beneficiary ceasing to participate in the scheme, or
  - (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme. 40
- (3) In subsection (2) –
- (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and

- (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
- (4) For the purposes of this section a residual interest vests in possession –
- (a) in a case within subsection (2)(a), on the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained); 5
- (b) in a case within subsection (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to him any of the property receivable pursuant to the right. 10
- (5) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees.
- (6) In subsection (5) –
- (a) “relevant benefits” here means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death; and 15
- (b) “employee” shall be read as if a director of a company were employed by it. 20
- 131 Interests to be disregarded: employer’s rights of recovery under pension scheme or employees’ share scheme**
- (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees’ share scheme, there shall be disregarded for the purposes of section 129 any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member. 25
- (2) In the case of a trust for the purposes of a pension scheme there shall also be disregarded any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained, under section 61 of the Pension Schemes Act 1993 (c. 48) or section 57 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (deduction of contributions equivalent premium from refund of scheme contributions) or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme under Part 3 of that Act. 30
- (3) In this section “pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees. 35
- “Relevant benefits” here means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death. 40
- (4) In this section “employer” and “employee” shall be read as if a director of a company were employed by it.

*Subsidiary acting as dealer in securities*

**132 Subsidiary acting as authorised dealer in securities**

- (1) The prohibition in section 127 (prohibition on subsidiary being a member of its holding company) does not apply where the shares are held by the subsidiary in the ordinary course of its business as an intermediary. 5
- (2) For this purpose a person is an intermediary if he –
  - (a) carries on a bona fide business of dealing in securities,
  - (b) is a member of an EEA exchange (and satisfies any requirements for recognition as a dealer in securities laid down by that exchange) or is otherwise approved or supervised as a dealer in securities under the laws of an EEA State, and 10
  - (c) does not carry on an excluded business.
- (3) The following are excluded businesses –
  - (a) a business that consists wholly or mainly in the making or managing of investments; 15
  - (b) a business that consists wholly or mainly in, or is carried on wholly or mainly for the purposes of, providing services to persons who are connected with the person carrying on the business;
  - (c) a business that consists in insurance business;
  - (d) a business that consists in managing or acting as trustee in relation to a pension scheme, or that is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme; 20
  - (e) a business that consists in operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the operator or trustee of such a scheme in connection with and for the purposes of the scheme. 25
- (4) For the purposes of this section –
  - (a) the question whether a person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988 (c. 1); 30
  - (b) “collective investment scheme” has the meaning given in section 236 of the Financial Services and Markets Act 2000 (c. 8);
  - (c) “EEA exchange” means a market that appears on the list drawn up by an EEA State pursuant to Article 16 of Council Directive 93/22/EEC on investment services in the securities field; 35
  - (d) “insurance business” means business that consists in the effecting or carrying out of contracts of insurance;
  - (e) “securities” includes –
    - (i) options,
    - (ii) futures, and 40
    - (iii) contracts for differences,and rights or interests in those investments;
  - (f) “trustee” and “the operator” in relation to a collective investment scheme shall be construed in accordance with section 237(2) of the Financial Services and Markets Act 2000. 45

- (5) Expressions used in this section that are also used in the provisions regulating activities under the Financial Services and Markets Act 2000 (c. 8) have the same meaning here as they do in those provisions.  
 See section 22 of that Act, orders made under that section and Schedule 2 to that Act. 5
- 133 Protection of third parties in other cases where subsidiary acting as dealer in securities**
- (1) This section applies where –
- (a) a subsidiary that is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in section 127, and 10
  - (b) a person acting in good faith has agreed, for value and without notice of the contravention, to acquire shares in the holding company –
    - (i) from the subsidiary or
    - (ii) from someone who has purportedly acquired the shares after their disposal by the subsidiary. 15
- (2) A transfer to that person of the shares mentioned in subsection (1)(a) has the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.
- Supplementary* 20
- 134 Application of provisions to companies not limited by shares**
- In relation to a company other than a company limited by shares, the references in this Chapter to shares shall be read as references to the interest of its members as such, whatever the form of that interest.
- 135 Application of provisions to nominees** 25
- The provisions of this Chapter apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.
- PART 9**  
 EXERCISE OF MEMBERS' RIGHTS
- 136 Enjoyment or exercise of members' rights** 30
- (1) This section applies where provision is made by a company's articles enabling a member to nominate another person or persons as entitled to enjoy or exercise all or any specified rights of the member in relation to the company.
- (2) So far as is necessary to give effect to that provision, anything required or authorised by any provision of the Companies Acts to be done by or in relation to the member shall instead be done, or (as the case may be) may instead be done, by or in relation to the nominated person (or each of them) as if he were a member of the company. 35
- (3) This applies, in particular, to the rights conferred by –
- (a) sections 270 and 272 (right to be sent proposed written resolution); 40

- (b) section 271 (right to require circulation of written resolution);
  - (c) section 282 (right to require directors to call general meeting);
  - (d) section 289 (right to notice of general meetings);
  - (e) section 293 (right to require circulation of a statement);
  - (f) section 303 (right to appoint proxy to act at meeting); 5
  - (g) section 317 (right to require circulation of resolution for AGM of public company); and
  - (h) section 404 (right to be sent a copy of annual accounts and reports).
- (4) This section and any such provision as is mentioned in subsection (1) –
- (a) do not confer rights enforceable against the company by anyone other than the member, and 10
  - (b) do not affect the requirements for an effective transfer or other disposition of the whole or part of a member's interest in the company.

### 137 Power to require provision to be made in company's articles

- (1) The Secretary of State may by regulations require companies to enable members to nominate another person or persons as entitled to receive documents and information that the member is entitled to receive from the company. 15
- (2) So far as is necessary to give effect to the regulations, any documents or information required or authorised by any provision of the Companies Acts to be sent or supplied to a member shall, or (as the case may be) may, instead be sent or supplied to the nominated person (or each of them) as if he were a member of the company. 20
- (3) Regulations under this section may –
- (a) make provision only in respect of a particular class or description of company; 25
  - (b) make provision only in respect of a particular document or a particular class of documents;
  - (c) make provision as to the manner and form in which the documents or information are to be sent or supplied (subject to subsection (4)); 30
  - (d) create summary criminal offences punishable with a fine not exceeding level 5 on the standard scale or such lower amount as may be specified.
- (4) No regulations are to be made having the effect of requiring documents to be sent or supplied in hard copy form unless the Secretary of State is satisfied –
- (a) that this would improve the ability of nominated persons to exercise rights arising under the articles or under an agreement between them and the member in question, and 35
  - (b) that the benefits would be significant having regard to the likely costs resulting from additional obligation.
- (5) Rights under regulations made under this section have effect as if they were rights under the company's articles and may be enforced by members accordingly. 40
- (6) This section and regulations made under this section –
- (a) do not confer rights enforceable against the company by anyone other than a member (except to the extent that such regulations create offences); and 45

- (b) do not affect the requirements for an effective transfer or other disposition of the whole or part of a member's interest in the company.
- (7) Regulations under this section are subject to affirmative resolution procedure.

## PART 10

### COMPANY DIRECTORS

5

#### CHAPTER 1

##### APPOINTMENT AND REMOVAL OF DIRECTORS

###### *Requirement to have directors*

### 138 Companies required to have directors

- (1) A private company must have at least one director. 10
- (2) A public company must have at least two directors.

### 139 Companies required to have at least one director who is a natural person

- (1) A company must have at least one director who is a natural person.
- (2) This requirement is met if the office of director is held by a natural person as a corporation sole or otherwise by virtue of an office. 15

### 140 Direction requiring company to make appointment

- (1) If it appears to the Secretary of State that a company is in breach of –  
section 138 (requirements as to number of directors), or  
section 139 (requirement to have at least one director who is a natural person),  
the Secretary of State may give the company a direction under this section. 20
- (2) The direction must specify –  
(a) the statutory requirement the company appears to be in breach of,  
(b) what the company must do in order to comply with the direction, and  
(c) the period within which it must do so. 25  
That period must be not less than one month or more than three months after the date on which the direction is given.
- (3) The direction must also inform the company of the consequences of failing to comply.
- (4) Where the company is in breach of section 138 or 139 it must comply with the direction by – 30  
(a) making the necessary appointment or appointments, and  
(b) giving notice of them under section 150,  
before the end of the period specified in the direction.
- (5) If the company has already made the necessary appointment or appointments (or so far as it has done so), it must comply with the direction by giving notice 35

of them under section 150 before the end of the period specified in the direction.

- (6) If a company fails to comply with a direction under this section, an offence is committed by –
- (a) the company, and 5
  - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 10

### *Appointment*

#### **141 Minimum age for appointment as director**

- (1) A person may not be appointed a director of a company unless he has attained the age of 16 years. 15
- (2) This does not affect the validity of an appointment that is not to take effect until the person appointed attains that age.
- (3) Where the office of director of a company is held by a corporation sole, or otherwise by virtue of another office, the appointment to that other office of a person who has not attained the age of 16 years is not effective also to make him a director of the company until he attains the age of 16 years. 20
- (4) An appointment made in contravention of this section is void.
- (5) Nothing in this section affects any liability of a person under any provision of the Companies Acts if he –
- (a) purports to act as director or 25
  - (b) acts as a shadow director,
- although he could not, by virtue of this section, be validly appointed as a director.
- (6) This section has effect subject to section 142 (power to provide for exceptions from minimum age requirement). 30

#### **142 Power to provide for exceptions from minimum age requirement**

- (1) The Secretary of State may make provision by regulations for cases in which a person who has not attained the age of 16 years may be appointed a director of a company.
- (2) The regulations must specify the circumstances in which, and any conditions subject to which, the appointment may be made. 35
- (3) If the specified circumstances cease to obtain, or any specified conditions cease to be met, a person who was appointed by virtue of the regulations and who has not since attained the age of 16 years ceases to hold office.
- (4) The regulations may make different provision for different parts of the United Kingdom. 40

This is without prejudice to the general power to make different provision for different cases.

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

### **143 Existing under-age directors**

- (1) This section applies where – 5
- (a) a person appointed a director of a company before section 141 (minimum age for appointment as director) comes into force has not attained the age of 16 when that section comes into force, or
- (b) the office of director of a company is held by a corporation sole, or otherwise by virtue of another office, and the person appointed to that other office has not attained the age of 16 years when that section comes into force, 10
- and the case is not one excepted from that section by regulations under section 142.
- (2) That person ceases to be a director on section 141 coming into force. 15
- (3) The company must make the necessary consequential alteration in its register of directors but need not give notice to the registrar of the change.
- (4) If it appears to the registrar (from other information) that a person has ceased by virtue of this section to be a director of a company, the registrar shall note that fact on the register. 20

### **144 Appointment of directors of public company to be voted on individually**

- (1) At a general meeting of a public company a motion for the appointment of two or more persons as directors of the company by a single resolution must not be made unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it. 25
- (2) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time.  
 But where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment applies.
- (3) For the purposes of this section a motion for approving a person's appointment, or for nominating a person for appointment, is treated as a motion for his appointment. 30
- (4) Nothing in this section applies to a resolution altering the company's articles.

### **145 Validity of acts of directors**

- (1) The acts of a person acting as a director are valid notwithstanding that it is afterwards discovered – 35
- (a) that there was a defect in his appointment;
- (b) that he was disqualified from holding office;
- (c) that he had ceased to hold office;
- (d) that he was not entitled to vote on the matter in question. 40
- (2) This applies even if the resolution for his appointment is void under section 144 (appointment of directors of public company to be voted on individually).



*Register of directors, etc*

**146 Register of directors**

- (1) Every company must keep a register of its directors.
- (2) The register –
  - (a) must contain the required particulars (see sections 147 to 149) of each person who is a director of the company, and 5
  - (b) must be kept available for inspection at the company’s registered office.
- (3) The register must be open to the inspection –
  - (a) of any member of the company without charge, and
  - (b) of any other person on payment of such fee as may be prescribed. 10
- (4) If default is made in complying with subsection (1) or (2), or if an inspection required under this section is refused, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.For this purpose a shadow director is treated as an officer of the company. 15
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (6) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it. 20

**147 Particulars of directors to be registered: individuals**

- (1) A company’s register of directors must contain the following particulars in the case of an individual –
  - (a) name and any former name; 25
  - (b) address;
  - (c) nationality;
  - (d) business occupation (if any);
  - (e) date of birth.
- (2) For the purposes of this section “name” means a person’s Christian name (or other forename) and surname, except that in the case of –
  - (a) a peer, or
  - (b) an individual usually known by a title,the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them. 30  
35
- (3) For the purposes of this section a “former name” means a name by which the individual was formerly known for business purposes.  
Where a person is or was formerly known by more than one such name, each of them must be stated.
- (4) It is not necessary for the register to contain particulars of a former name in the following cases – 40

- (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
  - (b) in the case of any person, where the former name –
    - (i) was changed or disused before the person attained the age of 16 years, or
    - (ii) has been changed or disused for 20 years or more.
- (5) A person’s “address” means the person’s usual residential address, unless it is a protected address (see Chapter 8 (directors’ residential addresses: non-disclosure certificates)) in which case it means a service address. The service address may be stated to be “The company’s registered office”.

#### **148 Particulars of directors to be registered: corporate directors and firms**

- A company’s register of directors must contain the following particulars in the case of a body corporate, or a firm that is a legal person under the law by which it is governed –
- (a) corporate or firm name;
  - (b) registered or principal office;
  - (c) in the case of an EEA company to which the First Company Law Directive applies, particulars of –
    - (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and
    - (ii) the registration number in that register;
  - (d) in any other case, particulars of –
    - (i) the legal form of the company or firm and the law by which it is governed, and
    - (ii) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

#### **149 Particulars of directors to be registered: power to make regulations**

- (1) The Secretary of State may make provision by regulations amending – section 147 (particulars of directors to be registered: individuals), or section 148 (particulars of directors to be registered: corporate directors and firms), so as to add to or remove items from the particulars required to be contained in a company’s register of directors.
- (2) Nothing in the regulations affects the operation of sections 218 to 225 (directors residential addresses: non-disclosure certificates).
- (3) Regulations under this section are subject to affirmative resolution procedure.

#### **150 Duty to notify registrar of changes**

- (1) A company must, within the period of 14 days from the occurrence of –
- (a) any change in its directors, or
  - (b) any change in the particulars contained in its register of directors,
- give notice to the registrar of the change and of the date on which it occurred.

- (2) Notice of a person having become a director of the company must—
  - (a) contain a statement of the particulars of the new director that are required to be included in the company’s register of directors, and
  - (b) be accompanied by a consent, authenticated by that person, to act in that capacity. 5
- (3) If default is made in complying with this section, an offence is committed by every officer of the company who is in default.  
For this purpose a shadow director is treated as an officer of the company.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 10

### **151 Application of provisions to shadow directors**

- (1) For the purposes of sections 146 to 149 (register of directors) a shadow director is treated as a director. 15

#### *Removal*

### **152 Resolution to remove director**

- (1) A company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him. 20
- (2) Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.
- (3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy. 25
- (4) A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.
- (5) This section is not to be taken— 30
  - (a) as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or
  - (b) as derogating from any power to remove a director that may exist apart from this section. 35

### **153 Director’s right to protest removal**

- (1) On receipt of notice of an intended resolution to remove a director under section 152, the company must forthwith send a copy of the notice to the director concerned.
- (2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting. 40

- (3) Where notice is given of an intended resolution to remove a director under that section, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so – 5
- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company). 10
- (4) If a copy of the representations is not sent as required by subsection (3) because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused. 15
- (6) The court may order the company's costs (in Scotland, expenses) on an application under subsection (5) to be paid in whole or in part by the director, notwithstanding that he is not a party to the application. 20

## CHAPTER 2

### GENERAL DUTIES OF DIRECTORS

#### *Introductory*

- 154 Scope and nature of general duties** 25
- (1) The general duties specified in sections 155 to 161 are owed by a director of a company to the company.
- (2) A person who ceases to be a director continues to be subject –
- (a) to the duty in section 159 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and 30
- (b) to the duty in section 160 (duty not to accept benefits from third parties) as regards things done or omitted by him before he ceased to be a director.
- To that extent those duties apply to a former director as to a director, subject to any necessary adaptations. 35
- (3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.
- (4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties. 40

- (5) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

*The general duties*

**155 Duty to act within powers**

- A director of a company must – 5
- (a) act in accordance with the company’s constitution, and
  - (b) only exercise powers for the purposes for which they are conferred.

**156 Duty to promote the success of the company**

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. 10
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, his duty is to act in the way he considers, in good faith, would be most likely to achieve those purposes.
- (3) In fulfilling the duty imposed by this section a director must (so far as reasonably practicable) have regard to – 15
- (a) the likely consequences of any decision in the long term,
  - (b) the interests of the company’s employees,
  - (c) the need to foster the company’s business relationships with suppliers, customers and others, 20
  - (d) the impact of the company’s operations on the community and the environment,
  - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
  - (f) the need to act fairly as between members of the company. 25
- (4) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

**157 Duty to exercise independent judgment**

- (1) A director of a company must exercise independent judgment. 30
- (2) This duty is not infringed by his acting –
- (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or
  - (b) in a way authorised by the company’s constitution.

**158 Duty to exercise reasonable care, skill and diligence** 35

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with –

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
- (b) the general knowledge, skill and experience that the director has.

**159 Duty to avoid conflicts of interest** 5

- (1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity). 10
- (3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.
- (4) This duty is not infringed –
  - (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - (b) if the matter has been authorised by the directors. 15
- (5) Authorisation may be given by the directors –
  - (a) where the company is a private company and nothing in the company’s constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or
  - (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution. 20
- (6) The authorisation is effective only if –
  - (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
  - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted. 25
- (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties. 30

**160 Duty not to accept benefits from third parties**

- (1) A director of a company must not accept a benefit from a third party conferred by reason of –
  - (a) his being a director, or
  - (b) his doing (or not doing) anything as director. 35
- (2) A “third party” means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate. 40
- (3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.

- (4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

**161 Duty to declare interest in proposed transaction or arrangement** 5

- (1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.
- (2) The declaration may (but need not) be made –
  - (a) at a meeting of the directors, or 10
  - (b) by notice to the directors in accordance with –
    - (i) section 167 (notice in writing), or
    - (ii) section 168 (general notice).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. 15
- (4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.
- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question. 20

For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.
- (6) A director need not declare an interest –
  - (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest; 25
  - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
  - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered – 30
    - (i) by a meeting of the directors, or
    - (ii) by a committee of the directors appointed for the purpose under the company's constitution.

*Supplementary provisions*

**162 Civil consequences of breach of general duties** 35

- (1) The consequences of breach (or threatened breach) of sections 155 to 161 are the same as would apply if the corresponding common law rule or equitable principle applied.
- (2) The duties in those sections (with the exception of section 158 (duty to exercise reasonable care, skill and diligence)) are, accordingly, enforceable in the same way as any other fiduciary duty owed to a company by its directors. 40

### 163 Cases within more than one of the general duties

Except as otherwise provided, more than one of the general duties may apply in any given case.

### 164 Consent, approval or authorisation by members

- |   |    |
|---|----|
| (1) In a case where –   | 5  |
| (a) section 159 (duty to avoid conflicts of interest) is complied with by authorisation by the directors, or  |    |
| (b) section 161 (duty to declare interest in proposed transaction or arrangement) is complied with,   |    |
| the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company.   | 10 |
| This is without prejudice to any enactment, or provision of the company’s constitution, requiring such consent or approval.   |    |
| (2) The application of the general duties is not affected by the fact that the case also falls within Chapter 4 (transactions requiring approval of members), except that where that Chapter applies and –  | 15 |
| (a) approval is given under that Chapter, or  |    |
| (b) the matter is one as to which it is provided that approval is not needed,   |    |
| it is not necessary also to comply with section 159 (duty to avoid conflicts of interest) or section 160 (duty not to accept benefits from third parties).  | 20 |
| (3) Compliance with the general duties does not remove the need for approval under any applicable provision of Chapter 4 (transactions requiring approval of members).  |    |
| (4) The general duties have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty. | 25 |
| (5) Otherwise, the general duties have effect (except as otherwise provided or the context otherwise requires) notwithstanding any enactment or rule of law.  |    |

## CHAPTER 3 30

### DECLARATION OF INTEREST IN EXISTING TRANSACTION OR ARRANGEMENT

### 165 Declaration of interest in existing transaction or arrangement

- |  |    |
|--|----|
| (1) Where a director of a company is in any way, directly or indirectly, interested in a transaction or arrangement that has been entered into by the company, he must declare the nature and extent of the interest to the other directors in accordance with this section. | 35 |
| This section does not apply if or to the extent that the interest has been declared under section 161 (duty to declare interest in proposed transaction or arrangement).   |    |
| (2) The declaration must be made –   | 40 |
| (a) at a meeting of the directors, or  |    |
| (b) by notice in writing (see section 167), or   |    |



- (c) by general notice (see section 168).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made as soon as is reasonably practicable. 5  
Failure to comply with this requirement does not affect the underlying duty to make the declaration.
- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question. 10  
For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.
- (6) A director need not declare an interest under this section –
  - (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest; 15
  - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
  - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered – 20
    - (i) by a meeting of the directors, or
    - (ii) by a committee of the directors appointed for the purpose under the company's constitution.

#### **166 Offence of failure to declare interest**

- (1) A director who fails to comply with the requirements of section 165 (declaration of interest in existing transaction or arrangement) commits an offence. 25
- (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

#### **167 Declaration made by notice in writing**

- (1) This section applies to a declaration of interest made by notice in writing.
- (2) The director must send the notice to the other directors.
- (3) The notice may be sent in hard copy form or, if the recipient has agreed to receive it in electronic form, in an agreed electronic form. 35
- (4) The notice may be sent –
  - (a) by hand or by post, or
  - (b) if the recipient has agreed to receive it by electronic means, by agreed electronic means. 40
- (5) Where a director declares an interest by notice in writing in accordance with this section –

- 
- (a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given, and
- (b) the provisions of section 227 (minutes of meetings of directors) apply as if the declaration had been made at that meeting.
- 168 General notice treated as sufficient declaration** 5
- (1) General notice in accordance with this section is a sufficient declaration of interest in relation to the matters to which it relates.
- (2) General notice is notice given to the directors of a company to the effect that the director –
- (a) has an interest (as member, officer, employee or otherwise) in a specified body corporate or firm and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that body corporate or firm, or 10
- (b) is connected with a specified person (other than a body corporate or firm) and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that person. 15
- (3) The notice must state the nature and extent of the director’s interest in the body corporate or firm or, as the case may be, the nature of his connection with the person. 20
- (4) General notice is not effective unless –
- (a) it is given at a meeting of the directors, or
- (b) the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.
- 169 Declaration of interest in case of company with sole director** 25
- (1) Where a declaration of interest under section 165 (duty to declare interest in existing transaction or arrangement) is required of a sole director of a company that is required to have more than one director –
- (a) the declaration must be recorded in writing,
- (b) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given, and 30
- (c) the provisions of section 227 (minutes of meetings of directors) apply as if the declaration had been made at that meeting.
- (2) Nothing in this section affects the operation of section 210 (contract with sole member who is also a director: terms to be set out in writing or recorded in minutes). 35
- 170 Declaration of interest in existing transaction by shadow director**
- (1) The provisions of this Chapter relating to the duty under section 165 (duty to declare interest in existing transaction or arrangement) apply to a shadow director as to a director, but with the following adaptations. 40
- (2) Subsection (2)(a) of that section (declaration at meeting of directors) does not apply.

- (3) In section 168 (general notice treated as sufficient declaration), subsection (4) (notice to be given at or brought up and read at meeting of directors) does not apply.
- (4) General notice by a shadow director is not effective unless given by notice in writing in accordance with section 167. 5

## CHAPTER 4

### TRANSACTIONS WITH DIRECTORS REQUIRING APPROVAL OF MEMBERS

#### *Service contracts*

#### **171 Directors' long-term service contracts: requirement of members' approval**

- (1) This section applies to provision under which the guaranteed term of a director's employment – 10
  - (a) with the company of which he is a director, or
  - (b) where he is the director of a holding company, within the group consisting of that company and its subsidiaries, 15is, or may be, longer than five years.
- (2) A company may not agree to such provision unless it has been approved –
  - (a) by resolution of the members of the company, and
  - (b) in the case of a director of a holding company, by resolution of the members of that company.
- (3) The guaranteed term of a director's employment is – 20
  - (a) the period (if any) during which the director's employment –
    - (i) is to continue, or may be continued otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), and 25
    - (ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances, or
  - (b) in the case of employment terminable by the company by notice, the period of notice required to be given, 30or, in the case of employment having a period within paragraph (a) and a period within paragraph (b), the aggregate of those periods.
- (4) If more than six months before the end of the guaranteed term of a director's employment the company enters into a further service contract (otherwise than in pursuance of a right conferred by or under the original contract on the other party to it), this section applies as if there were added to the guaranteed term of the new contract the unexpired period of the guaranteed term of the original contract. 35
- (5) A resolution approving provision to which this section applies must not be passed unless a memorandum setting out the proposed contract incorporating the provision is made available to members –
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him; 40
  - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both –

- 
- (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
  - (6) No approval is required under this section on the part of the members of –
    - (a) a body corporate that is not –
      - (i) a company as defined in section 1 of this Act, or
      - (ii) a body registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register);
    - (b) a body corporate that is a wholly-owned subsidiary of another body corporate. 10
  - (7) In this section “employment” means any employment under a director’s service contract.
- 172 Directors’ long-term service contracts: civil consequences of contravention**
- If a company agrees to provision in contravention of section 171 (directors’ long-term service contracts: requirement of members’ approval) – 15
- (a) the provision is void, to the extent of the contravention, and
  - (b) the contract is deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.
- Substantial property transactions* 20
- 173 Substantial property transactions: requirement of members’ approval**
- (1) A company may not enter into an arrangement under which –
    - (a) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset, or 25
    - (b) the company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected, unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained. 30
 For the meaning of “substantial non-cash asset” see section 174. 30
  - (2) If the director or connected person is a director of the company’s holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company.
  - (3) A company shall not be subject to any liability by reason of a failure to obtain approval required by this section. 35
  - (4) No approval is required under this section on the part of the members of –
    - (a) a body corporate that is not –
      - (i) a company as defined in section 1 of this Act, or
      - (ii) a body registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register); 40

- (b) a body corporate that is a wholly-owned subsidiary of another body corporate.
- (5) For the purposes of this section –
  - (a) an arrangement involving more than one non-cash asset, or
  - (b) an arrangement that is one of a series involving non-cash assets,shall be treated as if they involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or, as the case may be, the series. 5
- (6) This section does not apply to a transaction so far as it relates –
  - (a) to anything to which a director of a company is entitled under his service contract, or 10
  - (b) to payment for loss of office as defined in section 195 (payments requiring members’ approval).
- 174 Meaning of “substantial”**
  - (1) This section explains what is meant in section 173 (requirement of approval for substantial property transactions) by a “substantial” non-cash asset. 15
  - (2) An asset is a substantial asset in relation to a company if its value –
    - (a) exceeds 10% of the company’s asset value and is more than £5,000, or
    - (b) exceeds £100,000.
  - (3) For this purpose a company’s “asset value” at any time is – 20
    - (a) the value of the company’s net assets determined by reference to its most recent statutory accounts, or
    - (b) if no statutory accounts have been prepared, the amount of the company’s called-up share capital.
  - (4) A company’s “statutory accounts” means its annual accounts prepared in accordance with Part 15, and its “most recent” statutory accounts means those in relation to which the time for sending them out to members (see section 405) is most recent. 25
  - (5) Whether an asset is a substantial asset shall be determined as at the time the arrangement is entered into. 30
- 175 Exception for transactions with members or other group companies**

Approval is not required under section 173 (requirement of members’ approval for substantial property transactions) –

  - (a) for a transaction between a company and a person in his character as a member of that company, or 35
  - (b) for a transaction between –
    - (i) a holding company and its wholly-owned subsidiary, or
    - (ii) two wholly-owned subsidiaries of the same holding company.
- 176 Exception in case of company in winding up or administration**

Approval is not required under section 173 (requirement of members’ approval for substantial property transactions) on the part of the members of a company – 40

- (a) that is being wound up (unless the winding up is a members' voluntary winding up), or
- (b) that is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

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### 177 Exception for transactions on recognised investment exchange

- (1) Approval is not required under section 173 (requirement of members' approval for substantial property transactions) for a transaction on a recognised investment exchange effected by a director, or a person connected with him, through the agency of a person who in relation to the transaction acts as an independent broker. 10
- (2) For this purpose –
  - (a) “independent broker” means a person who, independently of the director or any person connected with him, selects the person with whom the transaction is to be effected; and 15
  - (b) “recognised investment exchange” has the same meaning as in Part 18 of the Financial Services and Markets Act 2000 (c. 8).

### 178 Property transactions: civil consequences of contravention

- (1) This section applies where a company enters into an arrangement in contravention of section 173 (requirement of members' approval for substantial property transactions). 20
- (2) The arrangement, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), is voidable at the instance of the company, unless –
  - (a) restitution of any money or other asset that was the subject-matter of the arrangement or transaction is no longer possible, 25
  - (b) the company has been indemnified in pursuance of this section by any other persons for the loss or damage suffered by it, or
  - (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the arrangement or transaction would be affected by the avoidance. 30
- (3) Whether or not the arrangement or any such transaction has been avoided, each of the persons specified in subsection (4) is liable –
  - (a) to account to the company for any gain that he has made directly or indirectly by the arrangement or transaction, and 35
  - (b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (4) The persons so liable are –
  - (a) any director of the company or of its holding company with whom the company entered into the arrangement in contravention of section 173, 40
  - (b) any person with whom the company entered into the arrangement in contravention of that section who is connected with a director of the company or of its holding company,
  - (c) the director of the company or of its holding company with whom any such person is connected, and 45

- (d) any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement.
- (5) Subsections (3) and (4) are subject to the following two subsections.
- (6) In the case of an arrangement entered into by a company in contravention of section 173 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company's compliance with that section. 5
- (7) In any case –
  - (a) a person so connected is not liable by virtue of subsection (4)(b), and 10
  - (b) a director is not liable by virtue of subsection (4)(d),  
if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.
- (8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the arrangement or transaction may be called in question or any liability to the company may arise. 15

#### 179 Property transactions: effect of subsequent affirmation

- Where a transaction or arrangement is entered into by a company in contravention of section 173 (requirement of members' approval) but, within a reasonable period, it is affirmed – 20
- (a) in the case of a contravention of subsection (1) of that section, by resolution of the members of the company, and
  - (b) in the case of a contravention of subsection (2) of that section, by resolution of the members of the holding company,
- the transaction or arrangement may no longer be avoided under section 178. 25

#### *Loans, quasi-loans and credit transactions*

#### 180 Loans or quasi-loans: requirement of members' approval

- (1) A company may not –
  - (a) make a loan or quasi-loan to a director of the company or of its holding company, or to a person connected with such a director, or 30
  - (b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to such a director, or to a person connected with such a director,unless the transaction has been approved by a resolution of the members of the company. 35
- (2) If the director or connected person is a director of its holding company or a person connected with such a director, the transaction must also have been approved by a resolution of the members of the holding company.
- (3) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members – 40
  - (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

- 
- (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—
- (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
  - (ii) at the meeting itself. 5
- (4) The matters to be disclosed are—
- (a) the nature of the transaction,
  - (b) the amount of the loan or quasi-loan and the purpose for which it is required, and
  - (c) the extent of the company’s liability under any transaction connected with the loan or quasi-loan. 10
- (5) No approval is required under this section on the part of the members of—
- (a) a body corporate that is not—
    - (i) a company as defined in section 1 of this Act, or
    - (ii) a body registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register); 15
  - (b) a body corporate that is a wholly-owned subsidiary of another body corporate.
- 181 Meaning of “quasi-loan” and related expressions 20**
- (1) A “quasi-loan” is a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (“the borrower”)— 25
- (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
  - (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.
- (2) Any reference to the person to whom a quasi-loan is made is a reference to the borrower. 30
- (3) The liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.
- 182 Credit transactions: requirement of members’ approval**
- (1) A company may not— 35
- (a) enter into a credit transaction as creditor for the benefit of a director of the company or of its holding company, or a person connected with such a director, or
  - (b) give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of such a director, or a person connected with such a director, 40
- unless the transaction (that is, the credit transaction, the giving of the guarantee or the provision of security, as the case may be) has been approved by a resolution of the members of the company.



- 
- (2) If the director or connected person is a director of its holding company or a person connected with such a director, the transaction must also have been approved by a resolution of the members of the holding company.
- (3) A resolution approving a transaction to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members— 5
- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
- (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both— 10
- (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and
- (ii) at the meeting itself.
- (4) The matters to be disclosed are— 15
- (a) the nature of the transaction,
- (b) the value of the credit transaction and the purpose for which the land, goods or services sold or otherwise disposed of, leased, hired or supplied under the credit transaction are required, and
- (c) the extent of the company’s liability under any transaction connected with the credit transaction. 20
- (5) No approval is required under this section on the part of the members of—
- (a) a body corporate that is not—
- (i) a company as defined in section 1 of this Act, or
- (ii) a body registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register); 25
- (b) a body corporate that is a wholly-owned subsidiary of another body corporate.
- 183 Meaning of “credit transaction”** 30
- (1) A “credit transaction” is a transaction under which one party (“the creditor”)—
- (a) supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement,
- (b) leases or hires any land or goods in return for periodical payments, or
- (c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred. 35
- (2) Any reference to the person for whose benefit a credit transaction is entered into is to the person to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the transaction. 40
- (3) In this section—
- “conditional sale agreement” has the same meaning as in the Consumer Credit Act 1974 (c. 39); and
- “services” means anything other than goods or land.

**184 Related arrangements: requirement of members' approval**

- (1) A company may not –
- (a) take part in an arrangement under which –
    - (i) another person enters into a transaction that, if it had been entered into by the company, would have required approval under section 180 or 182, and 5
    - (ii) that person, in pursuance of the arrangement, obtains a benefit from the company or a body corporate associated with it, or
  - (b) arrange for the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have required such approval, 10
- unless the arrangement in question has been approved by a resolution of the members of the company.
- (2) If the director or connected person for whom the transaction is entered into is a director of its holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company. 15
- (3) A resolution approving an arrangement to which this section applies must not be passed unless a memorandum setting out the matters mentioned in subsection (4) is made available to members – 20
- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both – 25
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (4) The matters to be disclosed are –
- (a) the matters that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates, 30
  - (b) the nature of the arrangement, and
  - (c) the extent of the company's liability under the arrangement or any transaction connected with it.
- (5) No approval is required under this section on the part of the members of – 35
- (a) a body corporate that is not –
    - (i) a company as defined in section 1 of this Act, or
    - (ii) a body registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register); 40
  - (b) a body corporate that is a wholly-owned subsidiary of another body corporate.
- (6) In determining for the purposes of this section whether a transaction is one that would have required approval under section 180 or 182 if it had been entered into by the company, the transaction shall be treated as having been entered into on the date of the arrangement. 45

### 185 Exception for expenditure on company business

- (1) Approval is not required under section 180 or 182 (requirement of members' approval for loans etc) for anything done by a company –
- (a) to provide a director of the company or of its holding company, or a person connected with any such director, with funds to meet expenditure incurred or to be incurred by him –
    - (i) for the purposes of the company, or
    - (ii) for the purpose of enabling him properly to perform his duties as an officer of the company, or
  - (b) to enable any such person to avoid incurring such expenditure.
- (2) This section does not authorise a company to enter into a transaction if the aggregate of –
- (a) the value of the transaction in question, and
  - (b) the value of any other relevant transactions or arrangements, exceeds £50,000.

### 186 Exception for expenditure on defending proceedings etc

- (1) Approval is not required under section 180 or 182 (requirement of members' approval for loans etc) for anything done by a company –
- (a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by him –
    - (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company, or
    - (ii) in connection with an application for relief (see subsection (5)), or
  - (b) to enable any such director to avoid incurring such expenditure, if it is done on the following terms.
- (2) The terms are –
- (a) that the loan is to be repaid, or (as the case may be) any liability of the company incurred in connection with the matter is to be discharged, in the event of –
    - (i) the director being convicted in the proceedings,
    - (ii) judgment being given against him in the proceedings, or
    - (iii) the court refusing to grant him relief on the application; and
  - (b) that it is to be so repaid or discharged not later than –
    - (i) the date when the conviction becomes final,
    - (ii) the date when the judgment becomes final, or
    - (iii) the date when the refusal of relief becomes final.
- (3) For this purpose a conviction, judgment or refusal of relief becomes final –
- (a) if not appealed against, at the end of the period for bringing an appeal;
  - (b) if appealed against, when the appeal (or any further appeal) is disposed of.
- (4) An appeal is disposed of –
- (a) if it is determined and the period for bringing any further appeal has ended, or
  - (b) if it is abandoned or otherwise ceases to have effect.

- (5) The reference in subsection (1)(a)(ii) to an application for relief is to an application for relief under –
- section 769 (general power of court to grant relief in case of honest and reasonable conduct), or
  - section 144(3) or (4) of the Companies Act 1985 (c. 6) (power of court to grant relief in case of acquisition of shares by innocent nominee). 5

### 187 Exceptions for minor and business transactions

- (1) Approval is not required under section 180 for a company to make a loan or quasi-loan, or to give a guarantee or provide security in connection with a loan or quasi-loan, if the aggregate of – 10
- (a) the value of the transaction, and
  - (b) the value of any other relevant transactions or arrangements,
- does not exceed £10,000.
- (2) Approval is not required under section 182 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if the aggregate of – 15
- (a) the value of the transaction (that is, of the credit transaction, guarantee or security), and
  - (b) the value of any other relevant transactions or arrangements,
- does not exceed £15,000. 20
- (3) Approval is not required under section 182 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if –
- (a) the transaction is entered into by the company in the ordinary course of the company's business, and 25
  - (b) the value of the transaction is not greater, and the terms on which it is entered into are not more favourable, than it is reasonable to expect the company would have offered to, or in respect of, a person of the same financial standing but unconnected with the company.

### 188 Exceptions for intra-group transactions 30

- (1) Approval is not required under section 180 for –
- (a) the making of a loan or quasi-loan to an associated body corporate, or
  - (b) the giving of a guarantee or provision of security in connection with a loan or quasi-loan made to an associated body corporate.
- (2) Approval is not required under section 182 – 35
- (a) to enter into a credit transaction as creditor for the benefit of an associated body corporate, or
  - (b) to give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of an associated body corporate. 40

### 189 Exceptions for money-lending companies

- (1) Approval is not required under section 180 for the making of a loan or quasi-loan, or the giving of a guarantee or provision of security in connection with a loan or quasi-loan, by a money-lending company if –

- (a) the transaction (that is, the loan, quasi-loan, guarantee or security) is entered into by the company in the ordinary course of the company’s business, and
  - (b) the value of the transaction is not greater, and its terms are not more favourable, than it is reasonable to expect the company would have offered to a person of the same financial standing but unconnected with the company. 5
- (2) A “money-lending company” means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees or provision of security in connection with loans or quasi-loans. 10
- (3) The condition specified in subsection (1)(b) does not of itself prevent a company from making a home loan –
- (a) to a director of the company or of its holding company, or
  - (b) to an employee of the company,
- if loans of that description are ordinarily made by the company to its employees and the terms of the loan in question are no more favourable than those on which such loans are ordinarily made. 15
- (4) For the purposes of subsection (3) a “home loan” means a loan –
- (a) for the purpose of facilitating the purchase, for use as the only or main residence of the person to whom the loan is made, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it, 20
  - (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it, or
  - (c) in substitution for any loan made by any person and falling within paragraph (a) or (b) above. 25

## 190 Other relevant transactions or arrangements

- (1) This section has effect for determining what are “other relevant transactions or arrangements” for the purposes of any exception to section 180 or 182. In the following provisions “the relevant exception” means the exception for the purposes of which that falls to be determined. 30
- (2) Other relevant transactions or arrangements are those previously entered into, or entered into at the same time as the transaction or arrangement in question in relation to which the following conditions are met.
- (3) Where the transaction or arrangement in question is entered into – 35
- (a) for a director of the company entering into it, or
  - (b) for a person connected with such a director,
- the conditions are that the transaction or arrangement was (or is) entered into for that director, or a person connected with him, by virtue of the relevant exception by that company or by any of its subsidiaries. 40
- (4) Where the transaction or arrangement in question is entered into –
- (a) for a director of the holding company of the company entering into it, or
  - (b) for a person connected with such a director,
- the conditions are that the transaction or arrangement was (or is) entered into for that director, or a person connected with him, by virtue of the relevant exception by the holding company or by any of its subsidiaries. 45

- (5) A transaction or arrangement entered into by a company that at the time it was entered into –
- (a) was a subsidiary of the company entering into the transaction or arrangement in question, or
  - (b) was a subsidiary of that company's holding company,
- is not a relevant transaction or arrangement if, at the time the question arises whether the transaction or arrangement in question falls within a relevant exception, it is no longer such a subsidiary.

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### 191 The value of transactions and arrangements

- (1) For the purposes of sections 180 to 194 (loans etc) –
- (a) the value of a transaction or arrangement is determined as follows, and
  - (b) the value of any other relevant transaction or arrangement is taken to be the value so determined reduced by any amount by which the liabilities of the person for whom the transaction or arrangement was made have been reduced.
- (2) The value of a loan is the amount of its principal.
- (3) The value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the creditor.
- (4) The value of a credit transaction is the price that it is reasonable to expect could be obtained for the goods, services or land to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the ordinary course of business and on the same terms (apart from price) as they have been supplied, or are to be supplied, under the transaction in question.
- (5) The value of a guarantee or security is the amount guaranteed or secured.
- (6) The value of an arrangement to which section 184 (related arrangements) applies is the value of the transaction to which the arrangement relates.
- (7) If the value of a transaction or arrangement is not capable of being expressed as a specific sum of money –
- (a) whether because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason, and
  - (b) whether or not any liability under the transaction or arrangement has been reduced,
- its value is deemed to exceed £50,000.

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### 192 The person for whom a transaction or arrangement is entered into

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For the purposes of sections 180 to 194 (loans etc) the person for whom a transaction or arrangement is entered into is –

- (a) in the case of a loan or quasi-loan, the person to whom it is made;
- (b) in the case of a credit transaction, the person to whom goods, land or services are supplied, sold, hired, leased or otherwise disposed of under the transaction;
- (c) in the case of a guarantee or security, the person for whom the transaction is made in connection with which the guarantee or security is entered into;

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- (d) in the case of an arrangement within section 184 (related arrangements), the person for whom the transaction is made to which the arrangement relates.

### 193 Loans etc: civil consequences of contravention

- (1) This section applies where a company enters into a transaction or arrangement in contravention of section 180, 182 or 184 (requirement of members' approval for loans etc). 5
- (2) The transaction or arrangement is voidable at the instance of the company, unless –
  - (a) restitution of any money or other asset that was the subject-matter of the transaction or arrangement is no longer possible, 10
  - (b) the company has been indemnified for any loss or damage resulting from the transaction or arrangement, or
  - (c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the transaction or arrangement would be affected by the avoidance. 15
- (3) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (4) is liable –
  - (a) to account to the company for any gain that he has made directly or indirectly by the transaction or arrangement, and 20
  - (b) (jointly and severally with any other person so liable under this section) to indemnify the company for any loss or damage resulting from the transaction or arrangement.
- (4) The persons so liable are –
  - (a) any director of the company or of its holding company with whom the company entered into the transaction or arrangement in contravention of section 180, 182 or 184, 25
  - (b) any person with whom the company entered into the transaction or arrangement in contravention of any of those sections who is connected with a director of the company or of its holding company, 30
  - (c) the director of the company or of its holding company with whom any such person is connected, and
  - (d) any other director of the company who authorised the transaction or arrangement.
- (5) Subsections (3) and (4) are subject to the following two subsections. 35
- (6) In the case of a transaction or arrangement entered into by a company in contravention of section 180, 182 or 184 with a person connected with a director of the company or of its holding company, that director is not liable by virtue of subsection (4)(c) if he shows that he took all reasonable steps to secure the company's compliance with the section concerned. 40
- (7) In any case –
  - (a) a person so connected is not liable by virtue of subsection (4)(b), and
  - (b) a director is not liable by virtue of subsection (4)(d),  
if he shows that, at the time the transaction or arrangement was entered into, he did not know the relevant circumstances constituting the contravention. 45

- (8) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction or arrangement may be called in question or any liability to the company may arise.

#### 194 Loans etc: effect of subsequent affirmation

Where a transaction or arrangement is entered into by a company in contravention of section 180, 182 or 184 (requirement of members' approval for loans etc) but, within a reasonable period, it is affirmed – 5

- (a) in the case of a contravention of subsection (1) of that section, by resolution of the members of the company, and  
 (b) in the case of a contravention of subsection (2) of that section, by resolution of the members of the holding company, 10
- the transaction or arrangement may no longer be avoided under section 193.

#### *Payments for loss of office*

#### 195 Payments for loss of office

- (1) In this Chapter a “payment for loss of office” means a payment made to a director or past director of a company – 15
- (a) by way of compensation for loss of office as director of the company,  
 (b) by way of compensation for loss, while director of the company or in connection with his ceasing to be a director of it, of –
- (i) any other office or employment in connection with the management of the affairs of the company, or 20  
 (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,
- (c) as consideration for or in connection with his retirement from his office as director of the company, or 25  
 (d) as consideration for or in connection with his retirement, while director of the company or in connection with his ceasing to be a director of it, from –
- (i) any other office or employment in connection with the management of the affairs of the company, or 30  
 (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (2) The references to compensation and consideration include benefits otherwise than in cash and references in this Chapter to payment have a corresponding meaning. 35
- (3) For the purposes of sections 197 to 201 (payments requiring members' approval) –
- (a) payment to a person connected with a director, or 40  
 (b) payment to any person at the direction of, or for the benefit of, a director or a person connected with him,
- is treated as payment to the director.
- (4) References in those sections to payment by a person include payment by another person at the direction of, or on behalf of, the person referred to. 45



**196 Amounts taken to be payments for loss of office**

- (1) This section applies where in connection with any such transfer as is mentioned in section 198 or 199 (payment in connection with transfer of undertaking, property or shares) a director of the company –
- (a) is to cease to hold office, or 5
  - (b) is to cease to be the holder of –
    - (i) any other office or employment in connection with the management of the affairs of the company, or
    - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company. 10
- (2) If in connection with any such transfer –
- (a) the price to be paid to the director for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of like shares, or 15
  - (b) any valuable consideration is given to the director by a person other than the company,
- the excess or, as the case may be, the money value of the consideration is taken for the purposes of those sections to have been a payment for loss of office.

**197 Payment by company: requirement of members' approval** 20

- (1) A company may not make a payment for loss of office to a director of the company unless the payment has been approved by a resolution of the members of the company.
- (2) A company may not make a payment for loss of office to a director of its holding company unless the proposal has been approved by a resolution of the members of each of those companies. 25
- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought – 30
- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
  - (b) in the case of a resolution at a meeting, by being made available for inspection by the members both – 35
    - (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
    - (ii) at the meeting itself.
- (4) No approval is required under this section on the part of the members of –
- (a) a body corporate that is not – 40
    - (i) a company as defined in section 1 of this Act, or
    - (ii) a body registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register);
  - (b) a body corporate that is a wholly-owned subsidiary of another body corporate. 45

**198 Payment in connection with transfer of undertaking etc: requirement of members' approval**

- (1) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company unless the payment has been approved by a resolution of the members of the company. 5
- (2) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of a subsidiary of the company unless the payment has been approved by a resolution of the members of each of the companies. 10
- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought –
- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him; 15
- (b) in the case of a resolution at a meeting, by being made available for inspection by the members both –
- (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and 20
- (ii) at the meeting itself.
- (4) No approval is required under this section on the part of the members of –
- (a) a body corporate that is not –
- (i) a company as defined in section 1 of this Act, or 25
- (ii) a body registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register);
- (b) a body corporate that is a wholly-owned subsidiary of another body corporate. 30
- (5) A payment made in pursuance of an arrangement –
- (a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and
- (b) to which the company whose undertaking or property is transferred, or any person to whom the transfer is made, is privy, 35
- is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

**199 Payment in connection with share transfer: requirement of members' approval**

- (1) No payment for loss of office may be made by any person to a director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid unless the payment has been approved by a resolution of the relevant shareholders. 40
- (2) The relevant shareholders are the holders of the shares to which the bid relates and of other holders of shares of the same class as any of those shares. 45

- (3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought –
- (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him; 5
  - (b) in the case of a resolution at a meeting, by being made available for inspection by the members both –
    - (i) at the company’s registered office for not less than 15 days ending with the date of the meeting, and 10
    - (ii) at the meeting itself.
- (4) Neither the person making the offer, nor any associate of his (as defined in section 430E of the Companies Act 1985 (c. 6)), is entitled to vote on the resolution, but – 15
- (a) where the resolution is proposed as a written resolution, they are entitled (if they would otherwise be so entitled) to be sent a copy of it, and
  - (b) at any meeting to consider the resolution they are entitled (if they would otherwise be so entitled) to be given notice of the meeting, to attend and speak and if present (in person or by proxy) to count towards the quorum. 20
- (5) If at a meeting to consider the resolution a quorum is not present, and after the meeting has been adjourned to a later date a quorum is again not present, the payment is (for the purposes of this section) deemed to have been approved. 25
- (6) No approval is required under this section on the part of shareholders in –
- (a) a body corporate that is not –
    - (i) a company as defined in section 1 of this Act, or
    - (ii) a body registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register); 30
  - (b) a body corporate that is a wholly-owned subsidiary of another body corporate.
- (7) A payment made in pursuance of an arrangement –
- (a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and 35
  - (b) to which the company whose shares are the subject of the bid, or any person to whom the transfer is made, is privy,
- is presumed, except in so far as the contrary is shown, to be a payment to which this section applies. 40

## 200 Exception for payments in discharge of legal obligations etc

- (1) Approval is not required under section 197, 198 or 199 (payments requiring members’ approval) for a payment made in good faith –
- (a) in discharge of an existing legal obligation (as defined below),
  - (b) by way of damages for breach of such an obligation, 45
  - (c) by way of settlement or compromise of any claim arising in connection with the termination of a person’s office or employment, or

- (d) by way of pension in respect of past services.
- (2) In relation to a payment within section 197 (payment by company) an existing legal obligation means an obligation of the company, or any body corporate associated with it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office. 5
- (3) In relation to a payment within section 198 or 199 (payment in connection with transfer of undertaking, property or shares) an existing legal obligation means an obligation of the person making the payment that was not entered into for the purposes of, in connection with or in consequence of, the transfer in question. 10
- (4) In the case of a payment within both section 197 and section 198, or within both section 197 and section 199, subsection (2) above applies and not subsection (3).
- (5) A payment part of which falls within subsection (1) above and part of which does not is treated as if the parts were separate payments.
- 201 Exception for small payments** 15
- (1) Approval is not required under section 197, 198 or 199 (payments requiring members' approval) if –
- (a) the payment in question is made by the company or any of its subsidiaries, and
- (b) the amount or value of the payment, together with the amount or value of any other relevant payments, does not exceed £200. 20
- (2) For this purpose “other relevant payments” are payments for loss of office in relation to which the following conditions are met.
- (3) Where the payment in question is one to which section 197 (payment by company) applies, the conditions are that the other payment was or is paid – 25
- (a) by the company making the payment in question or any of its subsidiaries,
- (b) to the director to whom that payment is made, and
- (c) in connection with the same event.
- (4) Where the payment in question is one to which section 198 or 199 applies (payment in connection with transfer of undertaking, property or shares), the conditions are that the other payment was (or is) paid in connection with the same transfer – 30
- (a) to the director to whom the payment in question was made, and
- (b) by the company making the payment or any of its subsidiaries. 35
- 202 Payments made without approval: civil consequences**
- (1) If a payment is made in contravention of section 197 (payment by company) –
- (a) it is held by the recipient on trust for the company making the payment, and
- (b) any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it. 40

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- (2) If a payment is made in contravention of section 198 (payment in connection with transfer of undertaking etc), it is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.
- (3) If a payment is made in contravention of section 199 (payment in connection with share transfer) – 5
- (a) it is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and
  - (b) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.
- (4) If a payment is in contravention of section 197 and section 198, subsection (2) of this section applies rather than subsection (1). 10
- (5) If a payment is in contravention of section 197 and section 199, subsection (3) of this section applies rather than subsection (1), unless the court directs otherwise.
- Supplementary* 15
- 203 Transactions requiring members’ approval: application of provisions to shadow directors**
- (1) For the purposes of –
- (a) sections 171 and 172 (directors’ service contracts),
  - (b) sections 173 to 179 (property transactions), 20
  - (c) sections 180 to 194 (loans etc), and
  - (d) sections 195 to 202 (payments for loss of office),
- a shadow director is treated as a director.
- (2) Any reference in those provisions to loss of office as a director does not apply in relation to loss of a person’s status as a shadow director. 25
- 204 Transactions requiring members’ approval: nature of resolution required**
- (1) The resolution of the members of a company required by any provision of this Chapter is an ordinary resolution.
- (2) This is subject to anything in the company’s articles requiring a higher majority (or unanimity). 30
- 205 Cases where approval is required under more than one provision**
- (1) Approval may be required under more than one provision of this Chapter.
  - (2) If so, the requirements of each applicable provision must be met.
  - (3) This does not require a separate resolution for the purposes of each provision.

## CHAPTER 5

### DIRECTORS’ SERVICE CONTRACTS

#### 206 Directors’ service contracts

- (1) For the purposes of this Part a director’s “service contract”, in relation to a company, means a contract under which— 5
- (a) a director of the company undertakes personally to perform services (as director or otherwise) for the company, or for a subsidiary of the company, or
  - (b) services (as director or otherwise) that a director of the company undertakes personally to perform are made available by a third party to the company, or to a subsidiary of the company. 10
- (2) The provisions of this Part relating to directors’ service contracts apply to the terms of a person’s appointment as a director of a company. 15
- They are not restricted to contracts for the performance of services outside the scope of the ordinary duties of a director.

#### 207 Copy of contract or memorandum of terms to be available for inspection

- (1) A company must keep available for inspection— 20
- (a) a copy of every director’s service contract with the company or with a subsidiary of the company, or
  - (b) if the contract is not in writing, a written memorandum setting out the terms of the contract.
- (2) All the copies and memoranda must be kept available for inspection at— 25
- (a) the company’s registered office;
  - (b) the place where its register of members is kept available for inspection (if not at its registered office); or
  - (c) its principal place of business (if that is situated in the part of the United Kingdom in which the company is registered).
- (3) The copies and memoranda must be retained by the company for at least one year from the date of termination or expiry of the contract and must be kept available for inspection during that time. 30
- (4) The company must give notice to the registrar— 35
- (a) of the place at which the copies and memoranda are kept available for inspection, and
  - (b) of any change in that place,
- unless they have at all times been kept at the company’s registered office.
- (5) If default is made in complying with subsection (1), (2) or (3), or default is made for 14 days in complying with subsection (4), an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 40

- (7) The provisions of this section apply to a variation of a director’s service contract as they apply to the original contract.

## 208 Right of member to inspect and request copy

- (1) Every copy or memorandum required to be kept under section 207 must be open to inspection by any member of the company without charge. 5
- (2) Any member of the company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum.  
The copy must be provided within seven days after the request is received by the company. 10
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (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 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
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it. 20

## 209 Directors’ service contracts: application of provisions to shadow directors

A shadow director is treated as a director for the purposes of the provisions of this Chapter.

## CHAPTER 6

### CONTRACTS WITH SOLE MEMBERS WHO ARE DIRECTORS 25

## 210 Contract with sole member who is also a director

- (1) This section applies where –
- (a) a limited company having only one member enters into a contract with the sole member,
  - (b) the sole member is also a director of the company, and 30
  - (c) the contract is not entered into in the ordinary course of the company’s business.
- (2) The company must, unless the contract is in writing, ensure that the terms of the contract are either –
- (a) set out in a written memorandum, or 35
  - (b) recorded in the minutes of the first meeting of the directors of the company following the making of the contract.
- (3) If a company fails to comply with this section an offence is committed by every officer of the company who is in default.

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- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) For the purposes of this section a shadow director is treated as a director.
- (6) Failure to comply with this section in relation to a contract does not affect the validity of the contract. 5
- (7) Nothing in this section shall be read as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of the company.

## CHAPTER 7

### DIRECTORS' LIABILITIES 10

#### *Provision protecting directors from liability*

#### **211 Provisions protecting directors from liability**

- (1) Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void. 15
- (2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as permitted by – 20
- (a) section 212 (provision of insurance),
- (b) section 213 (qualifying third party indemnity provisions).
- (3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise. 25

#### **212 Provision of insurance**

Section 211(2) (voidness of provisions for indemnifying directors) does not prevent a company from purchasing and maintaining for a director of the company, or of an associated company, insurance against any such liability as is mentioned in that subsection. 30

#### **213 Qualifying third party indemnity provision**

- (1) Section 211(2) (voidness of provisions for indemnifying directors) does not apply to qualifying third party indemnity provision.
- (2) Third party indemnity provision means provision for indemnity against liability incurred by the director to a person other than the company or an associated company. 35
- Such provision is qualifying third party indemnity provision if the following requirements are met.
- (3) The provision must not provide any indemnity against –



- 
- (a) any liability of the director to pay –
- (i) a fine imposed in criminal proceedings, or
  - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or 5
- (b) any liability incurred by the director –
- (i) in defending criminal proceedings in which he is convicted, or
  - (ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
  - (iii) in connection with an application for relief (see subsection (6)) in which the court refuses to grant him relief. 10
- (4) The references in subsection (3)(b) to a conviction, judgment or refusal of relief are to the final decision in the proceedings.
- (5) For this purpose –
- (a) a conviction, judgment or refusal of relief becomes final – 15
    - (i) if not appealed against, at the end of the period for bringing an appeal, or
    - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and
  - (b) an appeal is disposed of – 20
    - (i) if it is determined and the period for bringing any further appeal has ended, or
    - (ii) if it is abandoned or otherwise ceases to have effect.
- (6) The reference in subsection (3)(b)(iii) to an application for relief is to an application for relief under – 25
- section 769 (general power of court to grant relief in case of honest and reasonable conduct), or
  - section 144(3) or (4) of the Companies Act 1985 (c. 6) (power of court to grant relief in case of acquisition of shares by innocent nominee).
- 214 Qualifying third party indemnity provision to be disclosed in directors’ report 30**
- (1) This section requires disclosure of qualifying third party indemnity provision in the directors’ report.
- (2) If when a directors’ report is approved any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that such provision is in force. 35
- (3) If at any time during the financial year to which a directors’ report relates any such provision was in force for the benefit of one or more persons who were then directors of the company, the report must state that such provision was in force. 40
- (4) If when a directors’ report is approved qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, the report must state that such provision is in force. 45

- (5) If at any time during the financial year to which a directors’ report relates any such provision was in force for the benefit of one or more persons who were then directors of an associated company, the report must state that such provision was in force.

**215 Copy of qualifying third party indemnity provision to be available for inspection** 5

- (1) This section has effect where qualifying third party indemnity provision is made for a director of a company, and applies –
- (a) to the company of which he is a director (whether the provision is made by that company or an associated company), and 10
  - (b) where the provision is made by an associated company, to that company.
- (2) That company or, as the case may be, each of them must keep available for inspection –
- (a) a copy of the qualifying third party indemnity provision, or 15
  - (b) if the provision is not in writing, a written memorandum setting out its terms.
- (3) The copy or memorandum must be kept available for inspection at –
- (a) the company’s registered office;
  - (b) the place where its register of members is kept available for inspection (if not at its registered office); or 20
  - (c) its principal place of business (if that is situated in the part of the United Kingdom in which the company is registered).
- (4) The copy or memorandum must be retained by the company for at least one year from the date of termination or expiry of the provision and must be kept available for inspection during that time. 25
- (5) The company must give notice to the registrar –
- (a) of the place at which the copy or memorandum is kept available for inspection, and
  - (b) of any change in that place, 30
- unless it has at all times been kept at the company’s registered office.
- (6) If default is made in complying with subsection (2), (3) or (4), or default is made for 14 days in complying with subsection (5), an offence is committed by every officer of the company 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
- (8) The provisions of this section apply to a variation of a qualifying third party indemnity provision as they apply to the original provision. 40

**216 Right of member to inspect and request copy**

- (1) Every copy or memorandum required to be kept by a company under section 215 must be open to inspection by any member of the company without charge.

- (2) Any member of the company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such copy or memorandum.  
The copy must be provided within seven days after the request is received by the company. 5
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (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 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
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it. 15

*Ratification of acts giving rise to liability*

**217 Ratification of acts of directors**

- (1) This section applies to the ratification by a company of conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company. 20
- (2) The decision of the company to ratify such conduct –  
(a) must be taken by the members, and  
(b) may be taken by ordinary resolution, subject to anything in the company’s articles requiring a higher majority (or unanimity).
- (3) Where the resolution is proposed as a written resolution, members with a personal interest, direct or indirect, in the ratification are not eligible members. 25
- (4) Where the resolution is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by members with a personal interest, direct or indirect, in the ratification.  
This does not prevent such members from attending, being counted towards the quorum and taking part in the proceedings at any meeting at which the decision is considered. 30
- (5) For the purposes of this section –  
(a) “conduct” includes acts and omissions;  
(b) “director” includes a former director; and 35  
(c) a shadow director is treated as a director.
- (6) Nothing in this section affects –  
(a) the validity of a decision taken by unanimous consent of the members of the company, or  
(b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company. 40
- (7) This section does not affect any other enactment or rule of law as to the requirements for valid ratification or any rule of law as to acts that are incapable of being ratified by the company.

## CHAPTER 8

### DIRECTORS’ RESIDENTIAL ADDRESSES: NON-DISCLOSURE CERTIFICATE

#### 218 Issue of non-disclosure certificate

- (1) An individual who is, or is to be, a director of a company may apply to the registrar for a non-disclosure certificate in relation to his usual residential address. 5
- (2) The application must state the residential address in relation to which it is made.
- (3) If any fee payable in connection with the application is paid, then, subject to section 693 (defective delivery), the registrar must – 10
  - (a) issue the certificate applied for, and
  - (b) if the individual does not already have a unique identifier (see section 703), allocate one to him.
- (4) In the Companies Acts an address in relation to which a non-disclosure certificate is in force is referred to as a “protected address”. 15

#### 219 Effect of non-disclosure certificate: the company

- (1) This section applies where –
  - (a) a non-disclosure certificate is in force in relation to an individual’s usual residential address, and
  - (b) the individual to whom the certificate was issued has given notice to the company of – 20
    - (i) the protected address,
    - (ii) his unique identifier,
    - (iii) a service address, and
    - (iv) the country or state (or part of the United Kingdom) in which he is usually resident. 25
- (2) The company must make available for inspection in the register of directors (instead of the protected address) a statement of – 30
  - (a) the individual’s unique identifier and service address, and
  - (b) the country or state (or part of the United Kingdom) in which he is usually resident.
- (3) The company must notify those particulars (and not the protected address) to the registrar where it would otherwise be obliged to notify the individual’s usual residential address.
- (4) The company must not use or disclose the protected address except – 35
  - (a) for communicating with the individual to whom the certificate was issued, or
  - (b) in accordance with section 222 (disclosure under court order).

#### 220 Effect of non-disclosure certificate: the registrar

- (1) This section applies where a non-disclosure certificate is in force. 40
- (2) The registrar must omit the protected address as stated –

- (a) on the application for a non-disclosure certificate or on a notification of change of address under section 223, or
  - (b) on any other document where a residential address would normally be required to be notified,from the material on the register that is available for public inspection. 5
- (3) If a protected address is stated as mentioned in subsection (2)(b), the registrar may treat the document as not properly delivered.
- (4) The registrar is not obliged –
  - (a) to check documents other than those mentioned in subsection (2) to ensure the absence of a protected address, or 10
  - (b) to omit from the material that is available for public inspection anything registered before the certificate was issued.
- (5) The registrar must not use or disclose the protected address except –
  - (a) as permitted by section 221 (permitted use or disclosure by registrar), or 15
  - (b) in accordance with section 222 (disclosure under court order).

#### **221 Permitted use or disclosure by the registrar**

- (1) The registrar may use a protected address for communicating with the individual to whom the certificate was issued.
- (2) The registrar may disclose a protected address – 20
  - (a) to a public authority specified for the purposes of this section by regulations made by the Secretary of State, or
  - (b) to a credit reference agency.
- (3) The Secretary of State may make provision by regulations –
  - (a) specifying conditions for the disclosure of protected addresses in accordance with this section, and 25
  - (b) providing for the charging of fees.
- (4) In this section –
  - “credit reference agency” means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose; and 30
  - “public authority” includes any person or body having functions of a public nature.
- (5) Regulations under this section are subject to negative resolution procedure. 35

#### **222 Disclosure under court order**

- (1) The court may make an order for the disclosure of a protected address by the company or by the registrar if –
  - (a) there is evidence that service of documents at the service address provided in place of the protected address is not effective to bring them to the notice of the person having the benefit of the certificate, or 40
  - (b) it is necessary or expedient for the residential address to be provided in connection with the enforcement of an order or decree of the court, and the court is otherwise satisfied that it is appropriate to make the order.

- 
- (2) An order for disclosure by the registrar is to be made only if the company does not have the address or has been dissolved.
  - (3) The order may be made on the application of a liquidator, creditor or member of the company, or any other person appearing to the court to have a sufficient interest. 5
  - (4) The order must specify the persons to whom, and purposes for which, disclosure is authorised.

### 223 Non-disclosure certificate: change of address

- (1) This section applies where a protected address ceases to be the usual residential address of the individual to whom the non-disclosure certificate was issued. 10
- (2) The individual must give notice of the change to the registrar –
  - (a) if he was a director when the change occurred, not later than 14 days after the change, or
  - (b) if he was not a director when the change occurred, not later than 14 days after his becoming a director, 15
 stating what his residential address now is.  
 If notice is given in accordance with this subsection, the non-disclosure certificate continues in force and the new address becomes a protected address.
- (3) The individual must also give notice of the change to the company (that is, to every company of which he is a director) not later than 14 days after the change, stating what his residential address now is. 20
- (4) If an individual fails to give notice in accordance with this section, he commits an offence.
- (5) An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-fiftieth of level 5 on the standard scale. 25

### 224 Revocation of non-disclosure certificate

- (1) The individual to whom a non-disclosure certificate was issued may revoke it by notice to the registrar. 30
- (2) The registrar may revoke a non-disclosure certificate if –
  - (a) communications sent by the registrar to the individual and requiring a response within a specified period remain unanswered;
  - (b) the individual – 35
    - (i) provided (or caused to be provided) to the registrar any false, misleading or inaccurate information regarding his residential address, or
    - (ii) fails to give notice to the registrar under section 223(2) (notice of change of address); or 40
  - (c) there is evidence that service of documents at any service address provided in place of the protected address is not effective to bring them to the notice of the individual.
- (3) The registrar must give notice of the proposal to revoke the certificate –

- (a) to the individual to whom the certificate was issued, and
  - (b) to every company of which the registrar has been notified that the individual is a director.
- (4) The notice must –
- (a) state the grounds on which it is proposed to revoke the certificate, and 5
  - (b) specify a period within which representations may be made before the certificate is revoked.
- (5) It must be sent to the individual at the protected address, unless it appears to the registrar that service at that address may be ineffective to bring it to the individual’s notice, in which case it may be sent to any service address provided in place of the protected address. 10
- (6) The registrar must take account of any representations received within the specified period.

## **225 Effect of revocation**

- (1) Where a non-disclosure certificate is revoked, the residential address to which it applied (the “former protected address”) shall become available for public inspection, as follows. 15
- (2) The registrar must register the former protected address as the individual’s usual residential address in relation to all directorships held by the individual of which the registrar has been notified in place of the notified service address (or if more than one service address was notified, all of them). 20
- (3) The registrar must notify every company of which the registrar has been notified that the individual is a director –
- (a) of the revocation of the certificate, and
  - (b) of the residential address now registered as the individual’s address. 25
- (4) On receipt of the notification, the company must make the former protected address available for inspection in its register of directors rather than the service address.
- (5) If the company has been notified by the individual of a more recent address as his usual residential address, it must – 30
- (a) make that address available in its register of directors, and
  - (b) give notice to the registrar as on a change of registered particulars.

## **CHAPTER 9**

### **SUPPLEMENTARY PROVISIONS**

*Provision for employees on cessation or transfer of business* 35

## **226 Power to make provision for employees on cessation or transfer of business**

- (1) The powers of the directors of a company include (if they would not otherwise do so) power to make provision for the benefit of persons employed or formerly employed by the company, or any of its subsidiaries, in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary. 40

- 
- (2) This power is exercisable notwithstanding the general duty imposed by section 156 (duty to promote the success of the company).
- (3) In the case of a company that is a charity it is exercisable notwithstanding any restrictions on the directors' powers (or the company's capacity) flowing from the objects of the company. 5
- (4) The power may only be exercised if sanctioned –  
 (a) by a resolution of the company, or  
 (b) by a resolution of the directors,  
 in accordance with the following provisions.
- (5) The resolution of the company required is an ordinary resolution, subject to anything in the company's articles requiring a higher majority (or unanimity). 10
- (6) A resolution of the directors –  
 (a) must be authorised by the company's articles, and  
 (b) is not sufficient sanction for payments to or for the benefit of directors, former directors or shadow directors. 15
- (7) Any other requirements of the company's articles as to the exercise of the power conferred by this section must be complied with.
- (8) Any payment under this section must be made –  
 (a) before the commencement of any winding up of the company, and  
 (b) out of profits of the company that are available for dividend. 20

*Records of meetings of directors*

**227 Minutes of directors' meetings**

- (1) Every company must cause minutes of all proceedings at meetings of its directors to be recorded.
- (2) The records must be kept for at least ten years from the date of the meeting. 25
- (3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 30

**228 Minutes as evidence**

- (1) Minutes recorded in accordance with section 227, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting. 35
- (2) Where minutes have been made in accordance with that section of the proceedings of a meeting of directors, then, until the contrary is proved –  
 (a) the meeting is deemed duly held and convened,  
 (b) all proceedings at the meeting are deemed to have duly taken place, and 40



- (c) all appointments at the meeting are deemed valid.

*Meaning of "director" and "shadow director"*

**229 “Director”**

In the Companies Acts “director” includes any person occupying the position of director, by whatever name called. 5

**230 “Shadow director”**

- (1) In the Companies Acts “shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.
- (2) A person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity. 10
- (3) A body corporate is not to be regarded as a shadow director of any of its subsidiary companies for the purposes of –  
Chapter 2 (general duties of directors),  
Chapter 4 (transactions requiring members’ approval), or 15  
Chapter 6 (contract with sole member who is also a director),  
by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

*Other definitions*

**231 Persons connected with a director**

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- (1) This section defines what is meant by references in this Part to a person being “connected” with a director of a company (or a director being “connected” with a person).
- (2) The following persons (and only those persons) are connected with a director of a company – 25
- (a) members of the director’s family (see section 232);
- (b) a body corporate with which the director is connected (as defined in section 233);
- (c) a person acting in his capacity as trustee of a trust – 30
- (i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with him, or
- (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person, other than a trust for the purposes of an employees’ share scheme or a pension scheme; 35
- (d) a person acting in his capacity as partner –
- (i) of the director, or
- (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that director;
- (e) a firm that is a legal person under the law by which it is governed and in which – 40

- 
- (i) the director is a partner,
  - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the director, or
  - (iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director. 5
- (3) References in this Part to a person connected with a director of a company do not include a person who is himself a director of the company.
- 232 Members of a director’s family**
- (1) This section defines what is meant by references in this Part to members of a director’s family. 10
  - (2) For the purposes of this Part the members of a director’s family are –
    - (a) the director’s spouse or civil partner;
    - (b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship; 15
    - (c) the director’s children or step-children;
    - (d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18;
    - (e) the director’s parents. 20
  - (3) Subsection (2)(b) does not apply if the other person is the director’s grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece.
- 233 Director “connected with” a body corporate**
- (1) This section defines what is meant by references in this Part to a director being “connected with” a body corporate. 25
  - (2) A director is connected with a body corporate if, but only if, he and the persons connected with him together –
    - (a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or
    - (b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body. 30
  - (3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
  - (4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him. 35
  - (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
  - (6) For the avoidance of circularity in the application of section 231 (meaning of “connected person”) –
    - (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also40

- connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and
- (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact. 5

### 234 Director “controlling” a body corporate

- (1) This section defines what is meant by references in this Part to a director “controlling” a body corporate.
- (2) A director of a company is taken to control a body corporate if, but only if— 10
- (a) he or any person connected with him—
- (i) is interested in any part of the equity share capital of that body, or
- (ii) is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body, and 15
- (b) he, the persons connected with him and the other directors of that company, together—
- (i) are interested in more than 50% of that share capital, or
- (ii) are entitled to exercise or control the exercise of more than 50% of that voting power. 20
- (3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
- (4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him. 25
- (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
- (6) For the avoidance of circularity in the application of section 231 (meaning of “connected person”)—
- (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and 30
- (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact. 35

### 235 Associated bodies corporate

- (1) For the purposes of this Part bodies corporate are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate. 40
- (2) References to an “associated company” have a corresponding meaning.

### 236 References to company’s constitution

- (1) References in this Part to a company’s constitution include—

- (a) any resolution or other decision come to in accordance with the constitution, and
  - (b) any decision by the members of the company, or a class of members, that is treated by virtue of any enactment or rule of law as equivalent to a decision by the company. 5
- (2) This is in addition to the matters mentioned in section 18 (general provision as to matters contained in company’s constitution).

*General*

**237 Power to increase financial limits**

- (1) The Secretary of State may by order substitute for any sum of money specified in this Part a larger sum specified in the order. 10
  - (2) An order under this section is subject to negative resolution procedure.
  - (3) An order does not have effect in relation to anything done or not done before it comes into force.
- Accordingly, proceedings in respect of any liability incurred before that time may be continued or instituted as if the order had not been made. 15

**238 Transactions under foreign law**

For the purposes of this Part it is immaterial whether the law that (apart from this Act) governs an arrangement or transaction is the law of the United Kingdom, or a part of it, or not. 20

**PART 11**

DERIVATIVE CLAIMS AND PROCEEDINGS BY MEMBERS

**CHAPTER 1**

DERIVATIVE CLAIMS IN ENGLAND AND WALES OR NORTHERN IRELAND

- 239 Derivative claims** 25
- (1) This Chapter applies to proceedings in England and Wales or Northern Ireland by a member of a company –
    - (a) in respect of a cause of action vested in the company, and
    - (b) seeking relief on behalf of the company.
 This is referred to in this Chapter as a “derivative claim”. 30
  - (2) A derivative claim may only be brought –
    - (a) under this Chapter, or
    - (b) in pursuance of an order of the court in proceedings under section 459 of the Companies Act 1985 (c. 6) (proceedings for protection of members against unfair prejudice). 35
  - (3) A derivative claim under this Chapter may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.

The cause of action may be against the director or another person (or both).

- (4) It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.
- (5) For the purposes of this Chapter – 5
- (a) “director” includes a former director;
  - (b) a shadow director is treated as a director; and
  - (c) references to a member of a company include a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law. 10

#### **240 Application for permission to continue derivative claim**

- (1) A member of a company who brings a derivative claim under this Chapter must apply to the court for permission (in Northern Ireland, leave) to continue it.
- (2) The court may – 15
- (a) give permission (or leave) to continue the claim on such terms as it thinks fit,
  - (b) refuse permission (or leave) and dismiss the claim, or
  - (c) adjourn the proceedings on the application and give such directions as it thinks fit. 20

#### **241 Application for permission to continue claim as a derivative claim**

- (1) This section applies where –
- (a) a company has brought a claim, and
  - (b) the cause of action on which the claim is based could be pursued as a derivative claim under this Chapter. 25
- (2) A member of the company may apply to the court for permission (in Northern Ireland, leave) to continue the claim as a derivative claim on the ground that –
- (a) the manner in which the company commenced or continued the claim amounts to an abuse of the process of the court,
  - (b) the company has failed to prosecute the claim diligently, and 30
  - (c) it is appropriate for the member to continue the claim as a derivative claim.
- (3) The court may –
- (a) give permission (or leave) to continue the claim as a derivative claim on such terms as it thinks fit, 35
  - (b) refuse permission (or leave) and dismiss the application, or
  - (c) adjourn the proceedings on the application and give such directions as it thinks fit.

#### **242 Whether permission to be given**

- (1) The following provisions have effect where a member of a company applies for permission (in Northern Ireland, leave) under section 240 or 241. 40
- (2) Permission (or leave) must be refused if the court is satisfied –

- 
- (a) that a person acting in accordance with section 156 (duty to promote the success of the company) would not seek to continue the claim, or
- (b) where the cause of action arises from an act or omission that is yet to occur, that the act or omission has been authorised by the company, or
- (c) where the cause of action arises from an act or omission that has already occurred, that the act or omission –
- (i) was authorised by the company before it occurred or
- (ii) has been ratified by the company since it occurred.
- (3) In considering whether to give permission (or leave) the court must take into account, in particular –
- (a) whether the member is acting in good faith in seeking to continue the claim;
- (b) the importance that a person acting in accordance with section 156 (duty to promote the success of the company) would attach to continuing it;
- (c) where the cause of action results from an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be –
- (i) authorised by the company before it occurs, or
- (ii) ratified by the company after it occurs;
- (d) where the cause of action arises from an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company;
- (e) whether the company has decided not to pursue the claim;
- (f) whether the act or omission in respect of which the claim is brought gives rise to a cause of action that the member could pursue in his own right rather than on behalf of the company.
- (4) The Secretary of State may by regulations –
- (a) amend subsection (2) so as to alter or add to the circumstances in which permission (or leave) is to be refused;
- (b) amend subsection (3) so as to alter or add to the matters that the court is required to take into account in considering whether to give permission (or leave).
- (5) Before making any such regulations the Secretary of State shall consult such persons as he considers appropriate.
- (6) Regulations under this section are subject to affirmative resolution procedure.
- 243 Application for permission to continue derivative claim brought by another member**
- (1) This section applies where a member of a company (“the claimant”) –
- (a) has brought a derivative claim,
- (b) has continued as a derivative claim a claim brought by the company, or
- (c) has continued a derivative claim under this section.
- (2) Another member of the company (“the applicant”) may apply to the court for permission (in Northern Ireland, leave) to continue the claim on the ground that –

- (a) the manner in which the proceedings have been commenced or continued by the claimant amounts to an abuse of the process of the court,
  - (b) the claimant has failed to prosecute the claim diligently, and
  - (c) it is appropriate for the applicant to continue the claim as a derivative claim. 5
- (3) The court may –
- (a) give permission (or leave) to continue the claim on such terms as it thinks fit,
  - (b) refuse permission (or leave) and dismiss the application, or 10
  - (c) adjourn the proceedings on the application and give such directions as it thinks fit.

## CHAPTER 2

### DERIVATIVE PROCEEDINGS IN SCOTLAND

- 244 Derivative proceedings** 15
- (1) In Scotland, a member of a company may raise proceedings in respect of an act or omission specified in subsection (3) in order to protect the interests of the company and obtain a remedy on its behalf.
  - (2) A member of a company may raise such proceedings only under subsection (1). 20
  - (3) The act or omission referred to in subsection (1) is any actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.
  - (4) Proceedings may be raised under subsection (1) against (either or both) – 25
    - (a) the director referred to in subsection (3), or
    - (b) another person.
  - (5) This section does not affect – 30
    - (a) any right of a member of a company to raise proceedings in respect of an act or omission specified in subsection (3) in order to protect his own interests and obtain a remedy on his own behalf, or
    - (b) the court’s power to make an order under section 461(2)(c) of the Companies Act 1985 (c. 6) or anything done under such an order.
  - (6) In this Chapter – 35
    - (a) proceedings raised under subsection (1) are referred to as “derivative proceedings”,
    - (b) the act or omission in respect of which they are raised is referred to as the “cause of action”,
    - (c) “director” includes a former director,
    - (d) references to a director include a shadow director, and
    - (e) references to a member of a company include a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law. 40

## **245 Requirement for leave and notice**

- (1) Derivative proceedings may be raised by a member of a company only –
  - (a) with the leave of the court, and
  - (b) if –
    - (i) the member has given notice to the company in accordance with subsection (2), and 5
    - (ii) the period of notice has expired without the company having raised proceedings in respect of the cause of action.
  
- (2) The notice referred to in subsection (1)(b)(i) is a notice –
  - (a) specifying the cause of action, 10
  - (b) summarising the facts on which the derivative proceedings are to be based, and
  - (c) stating that, unless within the period of 28 days beginning with the date of service of the notice the company raises proceedings in respect of the cause of action, the member intends to raise derivative proceedings in respect of it. 15
  
- (3) The court may, on cause shown, dispense with or modify the requirement under subsection (1)(b).

## **246 Application to continue proceedings as derivative proceedings**

- (1) This section applies where –
  - (a) a company has raised proceedings, and
  - (b) the proceedings are in respect of an act or omission which could be the basis for derivative proceedings. 20
  
- (2) A member of the company may apply to the court to be substituted for the company in the proceedings, and for the proceedings to continue in consequence as derivative proceedings, on the ground that –
  - (a) the manner in which the company commenced or continued the proceedings amounts to an abuse of the process of the court,
  - (b) the company has failed to prosecute the proceedings diligently, and 30
  - (c) it is appropriate for the member to be substituted for the company in the proceedings.
  
- (3) The court may –
  - (a) grant the application on such terms as it thinks fit,
  - (b) refuse the application, or 35
  - (c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

## **247 Granting of leave**

- (1) The court must refuse leave to raise derivative proceedings or an application under section 246 if satisfied –
  - (a) that a person acting in accordance with section 156 (duty to promote the success of the company) would not seek to raise or continue the proceedings (as the case may be), or
  - (b) where the cause of action is an act or omission that is yet to occur, that the act or omission has been authorised by the company, or 45



- (c) where the cause of action is an act or omission that has already occurred, that the act or omission –
      - (i) was authorised by the company before it occurred, or
      - (ii) has been ratified by the company since it occurred.
  - (2) In considering whether to grant leave to raise derivative proceedings or an application under section 246, the court must take into account, in particular –
    - (a) whether the member is acting in good faith in seeking to raise or continue the proceedings (as the case may be),
    - (b) the importance that a person acting in accordance with section 156 (duty to promote the success of the company) would attach to raising or continuing them (as the case may be),
    - (c) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be –
      - (i) authorised by the company before it occurs, or
      - (ii) ratified by the company after it occurs,
    - (d) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company,
    - (e) whether the company has decided not to raise proceedings in respect of the same cause of action or to persist in the proceedings (as the case may be),
    - (f) whether the cause of action is one which the member could pursue in his own right rather than on behalf of the company.
  - (3) The Secretary of State may by regulations –
    - (a) amend subsection (1) so as to alter or add to the circumstances in which leave or an application is to be refused,
    - (b) amend subsection (2) so as to alter or add to the matters that the court is required to take into account in considering whether to grant leave or an application.
  - (4) Before making any such regulations the Secretary of State shall consult such persons as he considers appropriate.
  - (5) Regulations under this section are subject to affirmative resolution procedure.
- 248 Application by member to be substituted for member pursuing derivative proceedings**
- (1) This section applies where a member of a company (“the claimant”) –
    - (a) has raised derivative proceedings,
    - (b) has continued as derivative proceedings proceedings raised by the company, or
    - (c) has continued derivative proceedings under this section.
  - (2) Another member of the company (“the applicant”) may apply to the court to be substituted for the claimant in the action on the ground that –
    - (a) the manner in which the proceedings have been commenced or continued by the claimant amounts to an abuse of the process of the court,

- (b) the claimant has failed to prosecute the proceedings diligently, and
  - (c) it is appropriate for the applicant to be substituted for the claimant in the proceedings.
- (3) The court may – 5
- (a) grant the application on such terms as it thinks fit,
  - (b) refuse the application, or
  - (c) adjourn the proceedings on the application and make such order as to further procedure as it thinks fit.

## PART 12 10

### COMPANY SECRETARIES

#### *General*

#### **249 Private company not required to have secretary**

- (1) A private company is not required to have a secretary.
- (2) In the case of a private company – 15
- (a) anything authorised or required to be given or sent to, or served on, the company by being sent to its secretary –
    - (i) may be given or sent to, or served on, the company itself, and
    - (ii) if addressed to the secretary shall be treated as addressed to the company; and 20
  - (b) anything else required or authorised to be done by or to the secretary of the company may be done by or to –
    - (i) a director, or
    - (ii) a person authorised generally or specifically in that behalf by the directors. 25

#### **250 Public company required to have secretary**

A public company must have a secretary.

#### **251 Direction requiring public company to appoint secretary**

- (1) If it appears to the Secretary of State that a public company is in breach of section 250 (requirement to have secretary), the Secretary of State may give the company a direction under this section. 30
- (2) The direction must state that the company appears to be in breach of that section and specify –
- (a) what the company must do in order to comply with the direction, and
  - (b) the period within which it must do so. 35
- That period must be not less than one month or more than three months after the date on which the direction is given.
- (3) The direction must also inform the company of the consequences of failing to comply.

- (4) Where the company is in breach of section 250 it must comply with the direction by –
- (a) making the necessary appointment, and
  - (b) giving notice of it under section 255, before the end of the period specified in the direction. 5
- (5) If the company has already made the necessary appointment, it must comply with the direction by giving notice of it under section 255 before the end of the period specified in the direction.
- (6) If a company fails to comply with a direction under this section, an offence is committed by – 10
- (a) the company, and
  - (b) every officer of the company who is in default.
- For this purpose a shadow director is treated as an officer of the company.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 15

*Provisions applying to secretaries of public companies*

**252 Qualifications of secretaries of public companies**

- (1) It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company – 20
- (a) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company, and
  - (b) has one or more of the following qualifications.
- (2) The qualifications are – 25
- (a) that he has held the office of secretary of a public company for at least three of the five years immediately preceding his appointment as secretary;
  - (b) that he is a member of any of the bodies specified in subsection (3);
  - (c) that he is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom; 30
  - (d) that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging the functions of secretary of the company. 35
- (3) The bodies referred to in subsection (2)(b) are –
- (a) the Institute of Chartered Accountants in England and Wales;
  - (b) the Institute of Chartered Accountants of Scotland;
  - (c) the Association of Chartered Certified Accountants;
  - (d) the Institute of Chartered Accountants in Ireland; 40
  - (e) the Institute of Chartered Secretaries and Administrators;
  - (f) the Chartered Institute of Management Accountants;
  - (g) the Chartered Institute of Public Finance and Accountancy.

**253 Discharge of functions where office vacant or secretary unable to act**

Where in the case of a public company the office of secretary is vacant, or there is for any other reason no secretary capable of acting, anything required or authorised to be done by or to the secretary may be done –

- (a) by or to an assistant or deputy secretary (if any), or 5
- (b) if there is no assistant or deputy secretary or none capable of acting, by or to any person authorised generally or specially in that behalf by the directors.

**254 Duty to keep register of secretaries**

- (1) A public company must keep a register of its secretaries. 10
- (2) The register –
  - (a) must contain the required particulars (see sections 256 to 258) of the person who is, or persons who are, the secretary or joint secretaries of the company, and
  - (b) must be kept available for inspection at the company’s registered office. 15
- (3) The register must be open to the inspection –
  - (a) of any member of the company without charge, and
  - (b) of any other person on payment of such fee as may be prescribed.
- (4) If default is made in complying with subsection (1) or (2), or if an inspection required under this section is refused, an offence is committed by – 20
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 25
- (6) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

**255 Duty to notify registrar of changes** 30

- (1) A public company must, within the period of 14 days from the occurrence of –
  - (a) any change in its secretary, or
  - (b) any change in the particulars contained in its register of secretaries,
 give notice to the registrar of the change and of the date on which it occurred.
- (2) Notice of a person having become secretary, or one of joint secretaries, of the company must be accompanied by a consent by that person to act in the relevant capacity. 35
- (3) If default is made in complying with this section, an offence is committed by every officer of the company who is in default.
 

For this purpose a shadow director is treated as an officer of the company. 40
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for

continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

*Supplementary*

**256 Particulars of secretaries to be registered: individuals**

- (1) A public company's register of secretaries must contain the following particulars in the case of an individual – 5
- (a) name and any former name;
  - (b) address.
- (2) For the purposes of this section “name” means a person's Christian name (or other forename) and surname, except that in the case of – 10
- (a) a peer, or
  - (b) an individual usually known by a title,
- the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (3) For the purposes of this section a “former name” means a name by which the individual was formerly known for business purposes. 15
- Where a person is or was formerly known by more than one such name, each of them must be stated.
- (4) It is not necessary for the register to contain particulars of a former name in the following cases – 20
- (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
  - (b) in the case of any person, where the former name – 25
    - (i) was changed or disused before the person attained the age of 18 years, or
    - (ii) has been changed or disused for 20 years or more.
- (5) The address required to be stated in the register is a service address. This may be stated to be “The company's registered office”.

**257 Particulars of secretaries to be registered: corporate secretaries and firms** 30

- (1) A public company's register of secretaries must contain the following particulars in the case of a body corporate, or a firm that is a legal person under the law by which it is governed –
- (a) corporate or firm name;
  - (b) registered or principal office; 35
  - (c) in the case of an EEA company to which the First Company Law Directive applies, particulars of –
    - (i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and 40
    - (ii) the registration number in that register;
  - (d) in any other case, particulars of –
    - (i) the legal form of the company or firm and the law by which it is governed, and



## 261 Ordinary resolutions

- (1) An ordinary resolution of the members (or of a class of members) of a company means a resolution that is passed by a simple majority.
- (2) A written resolution is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of eligible members (see Chapter 2). 5
- (3) A resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of –
  - (a) the members who, being entitled to do so, vote in person on the resolution, and 10
  - (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.
- (4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of members who (being entitled to do so) vote in person or by proxy on the resolution. 15
- (5) Anything that may be done by ordinary resolution may also be done by special resolution.

## 262 Special resolutions

- (1) A special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75%. 20
- (2) A written resolution is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of eligible members (see Chapter 2).
- (3) Where a resolution of a private company is passed as a written resolution – 25
  - (a) the resolution is not a special resolution unless it stated that it was proposed as a special resolution, and
  - (b) if the resolution so stated, it may only be passed as a special resolution.
- (4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 75% if it is passed by not less than 75% of – 30
  - (a) the members who, being entitled to do so, vote in person on the resolution, and
  - (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.
- (5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution. 35
- (6) Where a resolution is passed at a meeting – 40
  - (a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution, and
  - (b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

### **263 Votes: general rules**

- (1) On a vote on a written resolution –
  - (a) in the case of a company having a share capital, every member has one vote in respect of each share or each £10 of stock held by him, and
  - (b) in any other case, every member has one vote. 5
- (2) On a vote on a resolution on a show of hands at a meeting –
  - (a) every member present in person has one vote, and
  - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (3) On a vote on a resolution on a poll taken at a meeting – 10
  - (a) in the case of a company having a share capital, every member has one vote in respect of each share or each £10 of stock held by him, and
  - (b) in any other case, every member has one vote.
- (4) The provisions of this section have effect subject to any provision of the company's articles. 15

### **264 Votes: specific requirements**

- (1) Where a member entitled to vote on a resolution has appointed one proxy only, and the company's articles provide that the proxy has fewer votes in a vote on a resolution on a show of hands taken at a meeting than the member would have if he were present in person – 20
  - (a) the provision about how many votes the proxy has on a show of hands is void, and
  - (b) the proxy has the same number of votes on a show of hands as the member who appointed him would have if he were present at the meeting. 25
- (2) Where a member entitled to vote on a resolution has appointed more than one proxy, subsection (1) applies as if the references to the proxy were references to the proxies taken together.
- (3) In relation to a resolution required or authorised by an enactment, if a private company's articles provide that a member has a different number of votes in relation to a resolution when it is passed as a written resolution and when it is passed on a poll taken at a meeting – 30
  - (a) the provision about how many votes a member has in relation to the resolution passed on a poll is void, and
  - (b) a member has the same number of votes in relation to the resolution when it is passed on a poll as he has when it is passed as a written resolution. 35

### **265 Votes of joint holders of shares**

- (1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes (and any proxies duly authorised by him) may be counted by the company. 40
- (2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members.



- (3) Subsections (1) and (2) have effect subject to any provision of the company’s articles.

**266 Effect of provision in company’s articles as to admissibility of votes**

- (1) This section applies where –
- (a) a person votes on a resolution of a company, 5
  - (b) that person was not entitled to vote as he did, and
  - (c) the company’s articles provide that an objection to a person’s entitlement to vote must be made in accordance with a procedure specified in the articles.
- (2) The person is deemed to have been entitled to vote as he did if – 10
- (a) no objection to his entitlement to vote is made in accordance with the procedure, or
  - (b) at least one objection to his entitlement to vote is made in accordance with the procedure, and each such objection is rejected in accordance with it. 15

**CHAPTER 2**

**WRITTEN RESOLUTIONS**

*General provisions about written resolutions*

**267 Written resolutions of private companies**

- (1) In the Companies Acts a “written resolution” means a resolution of a private company proposed and passed in accordance with this Chapter. 20
- (2) The following may not be passed as a written resolution –
- (a) a resolution under section 152 removing a director before the expiration of his period of office;
  - (b) a resolution under section 501 removing an auditor before the expiration of his term of office. 25
- (3) A resolution may be proposed as a written resolution –
- (a) by the directors of a private company (see section 270), or
  - (b) by the members of a private company (see sections 271 to 274).
- (4) References in enactments passed or made before this Chapter comes into force to – 30
- (a) a resolution of a company in general meeting, or
  - (b) a resolution of a meeting of a class of members of the company,
- have effect as if they included references to a written resolution of the members, or of a class of members, of a private company (as appropriate). 35
- (5) A written resolution of a private company has effect as if passed (as the case may be) –
- (a) by the company in general meeting, or
  - (b) by a meeting of a class of members of the company,

and references in enactments passed or made before this section comes into force to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

## **268 Eligible members**

- |   |    |
|---|----|
| (1) In relation to a resolution proposed as a written resolution of a private company, the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution (see section 269).   | 5  |
| (2) If the persons entitled to vote on a written resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent or submitted to a member for his agreement. | 10 |

### *Circulation of written resolutions*

## **269 Circulation date**

References in this Part to the circulation date of a written resolution are to the date on which copies of it are sent or submitted to members in accordance with this Chapter (or if copies are sent or submitted to members on different days, to the first of those days).	15
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## **270 Circulation of written resolutions proposed by directors**

- |  |    |
|--|----|
| (1) This section applies to a resolution proposed as a written resolution by the directors of the company.   | 20 |
| (2) The company must send or submit a copy of the resolution to every eligible member.   |    |
| (3) The company must do so –   |    |
| (a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or                   | 25 |
| (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn), | 30 |
| or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).                               |    |
| (4) The copy of the resolution must be accompanied by a statement informing the member –   | 35 |
| (a) how to signify agreement to the resolution (see section 275), and  |    |
| (b) as to the date by which the resolution must be passed if it is not to lapse (see section 276).   |    |
| (5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.   | 40 |
| (6) A person guilty of an offence under this section is liable –   |    |
| (a) on conviction on indictment, to a fine;  |    |

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

**271 Members’ power to require circulation of written resolution** 5

(1) The members of a private company may require the company to circulate a resolution that may properly be moved and is proposed to be moved as a written resolution.

(2) Any resolution may properly be moved as a written resolution unless –  
(a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company’s constitution or otherwise), 10  
(b) it is defamatory of any person, or  
(c) it is frivolous or vexatious.

(3) Where the members require a company to circulate a resolution they may require the company to circulate with it a statement of not more than 1,000 words on the subject matter of the resolution. 15

(4) A company is required to circulate the resolution and any accompanying statement once it has received requests that it do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution. 20

(5) The “requisite percentage” is 5% or such lower percentage as is specified for this purpose in the company’s articles.

(6) A request –  
(a) may be in hard copy form or in electronic form,  
(b) must identify the resolution and any accompanying statement, and 25  
(c) must be authenticated by the person or persons making it.

**272 Circulation of written resolution proposed by members**

(1) A company that is required under section 271 to circulate a resolution must send or submit to every eligible member –  
(a) a copy of the resolution, and 30  
(b) a copy of any accompanying statement.

This is subject to section 273(2) (deposit or tender of sum in respect of expenses of circulation) and section 274 (application not to circulate members’ statement).

(2) The company must do so – 35  
(a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or  
(b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn), 40

or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).

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- (3) The company must send or submit the copies (or, if copies are sent or submitted to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under section 271 to circulate the resolution.
- (4) The copy of the resolution must be accompanied by guidance as to – 5  
 (a) how to signify agreement to the resolution (see section 275), and  
 (b) the date by which the resolution must be passed if it is not to lapse (see section 276).
- (5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default. 10
- (6) A person guilty of an offence under this section is liable –  
 (a) on conviction on indictment, to a fine;  
 (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) The validity of the resolution, if passed, is not affected by a failure to comply with this section. 15

### **273 Expenses of circulation**

- (1) The expenses of the company in complying with section 272 must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise. 20
- (2) Unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.

### **274 Application not to circulate members' statement**

- (1) A company is not required to circulate a members' statement under section 272 if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by section 271 and that section are being abused. 25
- (2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application. 30

#### *Agreeing to written resolutions*

### **275 Procedure for signifying agreement to written resolution**

- (1) A member signifies his agreement to a proposed written resolution when the company receives from him (or from someone acting on his behalf) an authenticated document – 35  
 (a) identifying the resolution to which it relates, and  
 (b) indicating his agreement to the resolution.
- (2) The document must be sent to the company in hard copy form or in electronic form. 40

- (3) A member’s agreement to a written resolution, once signified, may not be revoked.
- (4) A written resolution is passed when the required majority of eligible members have signified their agreement to it.

**276 Period for agreeing to written resolution** 5

- (1) A proposed written resolution lapses if it is not passed before the end of—
  - (a) the period specified for this purpose in the company’s articles, or
  - (b) if none is specified, the period of 28 days beginning with the circulation date.
- (2) The agreement of a member to a written resolution is ineffective if signified after the expiry of that period. 10

*Supplementary*

**277 Sending documents relating to written resolutions by electronic means**

- (1) Where a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is deemed to have agreed that any document or information relating to that resolution may be sent by electronic means to that address (subject to any conditions or limitations specified in the document). 15
- (2) In this section “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means. 20

**278 Publication of written resolution on website**

- (1) This section applies where a company sends—
  - (a) a written resolution, or
  - (b) a statement relating to a written resolution,to a person by means of a website. 25
- (2) The resolution or statement is not validly sent for the purposes of this Chapter unless the resolution is available on the website throughout the period beginning with the circulation date and ending on the date on which the resolution lapses under section 276. 30

**279 Relationship between this Chapter and provisions of company’s articles**

A provision of the articles of a private company is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an enactment could not be proposed and passed as a written resolution.

## CHAPTER 3

### RESOLUTIONS AT MEETINGS

#### *General provisions about resolutions at meetings*

#### **280 Resolutions at general meetings**

A resolution of the members of a company is validly passed at a general meeting if – 5

- (a) notice of the meeting and of the resolution is given, and
  - (b) the meeting is held and conducted,
- in accordance with the provisions of this Chapter (and, where relevant, Chapter 4) and the company’s articles. 10

#### *Calling meetings*

#### **281 Directors’ power to call general meetings**

The directors of a company may call a general meeting of the company.

#### **282 Members’ power to require directors to call general meeting**

- (1) The members of a company may require the directors to call a general meeting of the company. 15
- (2) The directors are required to call a general meeting once the company has received requests to do so from –
  - (a) members who hold at least 10% of such of the paid-up capital of the company as carries the right of voting at general meetings of the company (excluding any paid-up capital held as treasury shares); or 20
  - (b) in the case of a company not having a share capital, members who represent at least 10% of the total voting rights of all the members having a right to vote at general meetings.
- (3) A request – 25
  - (a) must state the general nature of the business to be dealt with at the meeting, and
  - (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
- (4) A resolution may properly be moved at a meeting unless – 30
  - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company’s constitution or otherwise),
  - (b) it is defamatory of any person, or
  - (c) it is frivolous or vexatious.
- (5) A request – 35
  - (a) may be in hard copy form or in electronic form, and
  - (b) must be authenticated by the person or persons making it.

### **283 Directors' duty to call meetings required by members**

- (1) Directors required under section 282 to call a general meeting of the company must call a meeting –
  - (a) within 21 days from the date on which they become subject to the requirement, and 5
  - (b) to be held on a date not more than 28 days after the date of the notice convening the meeting.
- (2) If the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution. 10
- (3) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.
- (4) If the resolution is to be proposed as a special resolution, the directors are treated as not having duly called the meeting if they do not give the required notice of the resolution in accordance with section 262. 15

### **284 Power of members to call meeting at company's expense**

- (1) If the directors –
  - (a) are required under section 282 to call a meeting, and
  - (b) do not do so in accordance with section 283,the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting. 20
- (2) Where the requests received by the company included the text of a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution. 25
- (3) The meeting must be called for a date not more than three months after the date on which the directors become subject to the requirement to call a meeting.
- (4) The meeting must be called in the same manner, as nearly as possible, as that in which meetings are required to be called by directors of the company.
- (5) The business which may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section. 30
- (6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors duly to call a meeting must be reimbursed by the company.
- (7) Any sum so reimbursed shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default. 35

### **285 Power of court to order meeting**

- (1) This section applies if for any reason it is impracticable –
  - (a) to call a meeting of a company in any manner in which meetings of that company may be called, or 40
  - (b) to conduct the meeting in the manner prescribed by the company's articles or this Act.

- (2) The court may, either of its own motion or on the application –
- (a) of a director of the company, or
  - (b) of a member of the company who would be entitled to vote at the meeting,
- order a meeting to be called, held and conducted in any manner the court thinks fit. 5
- (3) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient.
- (4) Such directions may include a direction that one member of the company present at the meeting be deemed to constitute a quorum. 10
- (5) A meeting called, held and conducted in accordance with an order under this section is deemed for all purposes to be a meeting of the company duly called, held and conducted.

*Notice of meetings*

**286 Notice required of general meeting** 15

- (1) A general meeting of a private company (other than an adjourned meeting) must be called by notice of at least 14 days.
- (2) A general meeting of a public company (other than an adjourned meeting) must be called by notice of –
- (a) in the case of an annual general meeting, at least 21 days, and 20
  - (b) in any other case, at least 14 days.
- (3) The company’s articles may require a longer period of notice than that specified in subsection (1) or (2).
- (4) A general meeting may be called by shorter notice than that otherwise required if shorter notice is agreed by the members. 25  
 This does not apply to an annual general meeting of a public company.
- (5) The shorter notice must be agreed to by a majority in number of the members having a right to attend and vote at the meeting, being a majority who –
- (a) together hold not less than the requisite percentage in nominal value of the shares giving a right to attend and vote at the meeting (excluding any shares in the company held as treasury shares), or 30
  - (b) in the case of a company not having a share capital, together represent not less than the requisite percentage of the total voting rights at that meeting of all the members.
- (6) The requisite percentage is – 35
- (a) in the case of a private company, 90% or such higher percentage (not exceeding 95%) as may be specified in the company’s articles;
  - (b) in the case of a public company, 95%.

**287 Manner in which notice to be given**

- Notice of a general meeting of a company must be given – 40
- (a) in hard copy form,
  - (b) in electronic form, or



(c) by means of a website (see section 288),  
or partly by one such means and partly by another.

**288 Publication of notice of meeting on website**

- (1) Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section. 5
- (2) When the company notifies a member of the presence of the notice on the website the notification must –
- (a) state that it concerns a notice of a company meeting,
  - (b) specify the place, date and time of the meeting, and
  - (c) in the case of a public company, state whether the meeting will be an annual general meeting. 10
- (3) The notice must be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting.

**289 Persons entitled to receive notice of meetings** 15

- (1) Notice of a general meeting of a company must be sent to –
- (a) every member of the company, and
  - (b) every director.
- (2) In subsection (1), the reference to members includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of their entitlement. 20
- (3) In subsection (2), the reference to the bankruptcy of a member includes –
- (a) the sequestration of the estate of a member;
  - (b) a member’s estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)). 25
- (4) This section has effect subject to –
- (a) any enactment, and
  - (b) any provision of the company’s articles.

**290 Contents of notices of meetings**

- (1) Notice of a general meeting of a company must state – 30
- (a) the time and date of the meeting, and
  - (b) the place of the meeting.
- (2) Notice of a general meeting of a company must state the general nature of the business to be dealt with at the meeting.  
This subsection has effect subject to any provision of the company’s articles. 35

**291 Resolution requiring special notice**

- (1) Where by any provision of the Companies Acts special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved. 40

- (2) The company must, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.
- (3) Where that is not practicable, the company must give its members notice at least 14 days before the meeting – 5
- (a) by advertisement in a newspaper having an appropriate circulation, or
- (b) in any other manner allowed by the company’s articles.
- (4) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed to have been properly given, though not given within the time required. 10

**292 Accidental failure to give notice of resolution or meeting**

- (1) Where a company gives notice of – 15
- (a) a general meeting, or
- (b) a resolution intended to be moved at a general meeting,
- any accidental failure to give notice to one or more persons shall be disregarded for the purpose of determining whether notice of the meeting or resolution (as the case may be) is duly given.
- (2) Except in relation to notice given under – 20
- (a) section 283 (notice of meetings required by members),
- (b) section 284 (notice of meetings called by members), or
- (c) section 318 (notice of resolutions at AGMs proposed by members),
- subsection (1) has effect subject to any provision of the company’s articles.

*Members’ statements*

**293 Members’ power to require circulation of statements** 25

- (1) The members of a company may require the company to circulate, to members of the company entitled to receive notice of a general meeting, a statement of not more than 1,000 words with respect to – 30
- (a) a matter referred to in a proposed resolution to be dealt with at that meeting, or
- (b) other business to be dealt with at that meeting.
- (2) A company is required to circulate a statement once it has received requests to do so from – 35
- (a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote (excluding any voting rights attached to any shares in the company held as treasury shares), or
- (b) at least 100 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.
- (3) In subsection (2), a “relevant right to vote” means – 40
- (a) in relation to a statement with respect to a matter referred to in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate, and

- (b) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request –

- (a) may be in hard copy form or in electronic form,
- (b) must identify the statement to be circulated, 5
- (c) must be authenticated by the person or persons making it, and
- (d) must be received by the company at least one week before the meeting to which it relates.

**294 Company’s duty to circulate members’ statement**

- (1) A company that is required under section 293, to circulate a statement must send a copy of it to each member of the company entitled to receive notice of the meeting – 10
  - (a) in the same manner as the notice of the meeting, and
  - (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting. 15
- (2) Subsection (1) has effect subject to section 295(2) (deposit or tender of sum in respect of expenses of circulation) and section 296 (application not to circulate members’ statement).
- (3) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default. 20
- (4) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

**295 Expenses of circulating members’ statement** 25

- (1) The expenses of the company in complying with section 294 need not be paid by the members who requested the circulation of the statement if –
  - (a) the meeting to which the requests relate is an annual general meeting of a public company, and
  - (b) requests sufficient to require the company to circulate the statement are received before the end of the financial year preceding the meeting. 30
- (2) Otherwise –
  - (a) the expenses of the company in complying with that section must be paid by the members who requested the circulation of the statement unless the company resolves otherwise, and 35
  - (b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

**296 Application not to circulate members’ statement** 40

- (1) A company is not required to circulate a members’ statement under section 294 if, on an application by the company or another person who claims to be

aggrieved, the court is satisfied that the rights conferred by section 293 and that section are being abused.

- (2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application. 5

*Procedure at meetings*

**297 Quorum at meetings**

- (1) In the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting is a quorum.
- (2) In any other case, subject to the provisions of the company's articles, two qualifying persons present at a meeting are a quorum, unless – 10
- (a) each is a qualifying person only because he is authorised under section 302 to act as the representative of a corporation in relation to the meeting, and they are representatives of the same corporation; or
  - (b) each is a qualifying person only because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member. 15
- (3) For the purposes of this section a “qualifying person” means –
- (a) an individual who is a member of the company,
  - (b) a person authorised under section 302 (representation of corporations at meetings) to act as the representative of a corporation in relation to the meeting, or 20
  - (c) a person appointed as proxy of a member in relation to the meeting.

**298 Chairman of meeting**

- (1) A member may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting. 25
- (2) Subsection (1) is subject to any provision of the company's articles that states who may or may not be chairman.

**299 Declaration by chairman on a show of hands**

- (1) On a vote on a resolution at a meeting on a show of hands, a declaration by the chairman that the resolution – 30
- (a) has or has not been passed, or
  - (b) passed with a particular majority,
- is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. 35
- (2) An entry in respect of such a declaration in minutes of the meeting recorded in accordance with section 334 is also conclusive evidence of that fact without such proof.
- (3) This section does not have effect if a poll is demanded in respect of the resolution (and the demand is not subsequently withdrawn). 40

### 300 Right to demand a poll

- (1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than –
  - (a) the election of the chairman of the meeting, or 5
  - (b) the adjournment of the meeting.
- (2) A provision of a company's articles is void in so far as it would have the effect of making ineffective a demand for a poll on any such question which is made –
  - (a) by not less than 5 members having the right to vote on the resolution; or 10
  - (b) by a member or members representing not less than 10% of the total voting rights of all the members having the right to vote on the resolution (excluding any voting rights attached to any shares in the company held as treasury shares); or
  - (c) by a member or members holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right (excluding shares in the company conferring a right to vote on the resolution which are held as treasury shares). 15  
20

### 301 Voting on a poll

On a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

### 302 Representation of corporations at meetings 25

- (1) If a corporation (whether or not a company within the meaning of this Act) is a member of a company, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives at any meeting of the company.
- (2) Where the corporation authorises only one person, he is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company. 30
- (3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company. 35
- (4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under subsection (3) –
  - (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way,
  - (b) if they do not purport to exercise the power in the same way, the power is treated as not exercised. 40

*Proxies*

**303 Rights to appoint proxies**

- (1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company. 5
- (2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him, or (as the case may be) to a different £10, or multiple of £10, of stock held by him.

**304 Notice of meeting to contain statement of rights** 10

- (1) In every notice calling a meeting of a company there must appear, with reasonable prominence, a statement informing the member of—
- (a) his rights under section 303, and
  - (b) any more extensive rights conferred by the company's articles to appoint more than one proxy. 15
- (2) Failure to comply with this section does not affect the validity of the meeting or of anything done at the meeting.
- (3) If this section is not complied with as respects any meeting, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 20

**305 Company-sponsored invitations to appoint proxies**

- (1) If for the purposes of a meeting there are issued at the company's expense invitations to members to appoint as proxy a specified person or a number of specified persons, the invitations must be issued to all members entitled to vote at the meeting. 25
- (2) Subsection (1) is not contravened if—
- (a) there is issued to a member at his request a form of appointment naming the proxy or a list of persons willing to act as proxy, and
  - (b) the form or list is available on request to all members entitled to vote at the meeting. 30
- (3) If subsection (1) is contravened as respects a meeting, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 35

**306 Notice required of appointment of proxy etc**

- (1) This section applies to—
- (a) the appointment of a proxy, and
  - (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy. 40

- (2) Any provision of the company’s articles is void in so far as it would have the effect of requiring any such appointment or document to be received by the company or another person earlier than the following time –
- (a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting; 5
  - (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
  - (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.
- (3) In calculating the periods mentioned in subsection (2) no account shall be taken of any part of a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in the part of the United Kingdom in which the company is registered. 10

### **307 Chairing meetings**

- (1) A proxy may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting. 15
- (2) Subsection (1) is subject to any provision of the company’s articles that states who may or who may not be chairman.

### **308 Right of proxy to demand a poll**

- (1) The appointment of a proxy to vote on a matter at a meeting of a company authorises the proxy to demand, or join in demanding, a poll on that matter. 20
- (2) In applying the provisions of section 300(2) (requirements for effective demand), a demand by a proxy counts –
- (a) for the purposes of paragraph (a), as a demand by the member;
  - (b) for the purposes of paragraph (b), as a demand by a member representing the voting rights that the proxy is authorised to exercise; 25
  - (c) for the purposes of paragraph (c), as a demand by a member holding the shares to which those rights are attached.

### **309 Notice required of termination of proxy’s authority**

- (1) This section applies to notice that the authority of a person to act as proxy is terminated (“notice of termination”). 30
- (2) The termination of the authority of a person to act as proxy does not affect –
- (a) whether he counts in deciding whether there is a quorum at a meeting,
  - (b) the validity of anything he does as chairman of a meeting, or
  - (c) the validity of a poll demanded by him at a meeting, 35
- unless the company receives notice of the termination before the commencement of the meeting.
- (3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination – 40
- (a) before the commencement of the meeting or adjourned meeting at which the vote is given, or

- 
- (b) in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for taking the poll.
- (4) If the company’s articles require or permit members to give notice of termination to a person other than the company, the references above to the company receiving notice have effect as if they were or (as the case may be) included a reference to that person. 5
- (5) Subsections (2) and (3) have effect subject to any provision of the company’s articles which has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections. 10  
 This is subject to subsection (6).
- (6) Any provision of the company’s articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time – 15
- (a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting;
- (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
- (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded. 20
- (7) In calculating the periods mentioned in subsections (3)(b) and (6) no account shall be taken of any part of a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in the part of the United Kingdom in which the company is registered.
- 310 Saving for more extensive rights conferred by articles** 25
- Nothing in sections 303 to 309 (proxies) prevents a company’s articles from conferring more extensive rights on members or proxies than are conferred by those sections.
- Adjourned meetings*
- 311 Resolution passed at adjourned meeting** 30
- Where a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.
- Electronic communications*
- 312 Sending documents relating to meetings etc in electronic form** 35
- (1) Where a company has given an electronic address in a notice calling a meeting, it is deemed to have agreed that any document or information relating to proceedings at the meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).
- (2) Where a company has given an electronic address – 40



- (a) in an instrument of proxy sent out by the company in relation to the meeting, or
  - (b) in an invitation to appoint a proxy issued by the company in relation to the meeting,
- it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice). 5
- (3) In subsection (2), documents relating to proxies include –
    - (a) the appointment of a proxy in relation to a meeting,
    - (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, and 10
    - (c) notice of the termination of the authority of a proxy.
  - (4) In this section “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means. 15

*Application to class meetings*

**313 Application to class meetings**

- (1) The provisions of this Chapter apply (with necessary modifications) in relation to a meeting of holders of a class of shares as they apply in relation to a general meeting. 20  
This is subject to subsections (2) and (3).
- (2) The following provisions of this Chapter do not apply in relation to a meeting of holders of a class of shares –
  - (a) sections 282 to 284 (members’ power to require directors to call general meeting), and 25
  - (b) section 285 (power of court to order meeting).
- (3) The following provisions (in addition to those mentioned in subsection (2)) do not apply in relation to a meeting in connection with the variation of rights attached to a class of shares (a “variation of class rights meeting”) –
  - (a) section 297 (quorum), and 30
  - (b) section 300 (right to demand a poll).
- (4) The quorum for a variation of class rights meeting is –
  - (a) for a meeting other than an adjourned meeting, two persons present holding at least one-third in nominal value of the issued shares of the class in question (excluding any shares of that class held as treasury shares); 35
  - (b) for an adjourned meeting, one person present holding shares of the class in question.
- (5) For the purposes of subsection (4), where a person is present by proxy or proxies, he is treated as holding only the shares in respect of which those proxies are authorised to exercise voting rights. 40
- (6) At a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.
- (7) For the purposes of this section –

- (a) any alteration of a provision contained in a company’s articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
- (b) references to the variation of rights attached to a class of shares include references to their abrogation. 5

### **314 Application to class meetings: companies without a share capital**

- (1) The provisions of this Chapter apply (with necessary modifications) in relation to a meeting of a class of members of a company without a share capital as they apply in relation to a general meeting. 10  
 This is subject to subsections (2) and (3).
- (2) The following provisions of this Chapter do not apply in relation to a meeting of a class of members –
  - (a) sections 282 to 284 (members’ power to require directors to call general meeting), and 15
  - (b) section 285 (power of court to order meeting).
- (3) The following provisions (in addition to those mentioned in subsection (2)) do not apply in relation to a meeting in connection with the variation of the rights of a class of members (a “variation of class rights meeting”) –
  - (a) section 297 (quorum), and 20
  - (b) section 300 (right to demand a poll).
- (4) The quorum for a variation of class rights meeting is –
  - (a) for a meeting other than an adjourned meeting, two members of the class present (in person or by proxy) who together represent at least one-third of the voting rights of the class; 25
  - (b) for an adjourned meeting, one member of the class present (in person or by proxy).
- (5) At a variation of class rights meeting, any member present (in person or by proxy) may demand a poll.
- (6) For the purposes of this section – 30
  - (a) any alteration of a provision contained in a company’s articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
  - (b) references to the variation of rights of a class of members include references to their abrogation. 35

## **CHAPTER 4**

### **PUBLIC COMPANIES: ADDITIONAL REQUIREMENTS FOR AGMS**

### **315 Public companies: annual general meeting**

- (1) Every public company must hold a general meeting as its annual general meeting in each period of 6 months beginning with the day following its accounting reference date (in addition to any other meetings held during that period). 40

- (2) A company that fails to comply with subsection (1) as a result of giving notice under section 370 (alteration of accounting reference date) –
  - (a) specifying a new accounting reference date, and
  - (b) stating that the current accounting reference period or the previous accounting reference period is to be shortened,shall be treated as if it had complied with subsection (1) if it holds a general meeting as its annual general meeting within 3 months of giving that notice. 5
- (3) If a company fails to comply with subsection (1), 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 – 10
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **316 Public companies: notice of AGM**

- (1) A notice calling an annual general meeting of a public company must state that the meeting is an annual general meeting. 15
- (2) An annual general meeting may be called by shorter notice than that required by section 286(2) or by the company’s articles (as the case may be), if all the members entitled to attend and vote at the meeting agree to the shorter notice.

### **317 Public companies: members’ power to require circulation of resolutions for AGMs** 20

- (1) The members of a public company may require the company to give, to members of the company entitled to receive notice of the next annual general meeting, notice of a resolution which may properly be moved and is intended to be moved at that meeting. 25
- (2) A resolution may properly be moved at an annual general meeting unless –
  - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company’s constitution or otherwise),
  - (b) it is defamatory of any person, or
  - (c) it is frivolous or vexatious. 30
- (3) A company is required to give notice of a resolution once it has received requests that it do so from –
  - (a) members representing at least 5% of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate (excluding any voting rights attached to any shares in the company held as treasury shares), or
  - (b) at least 100 members who have a right to vote on the resolution at the annual general meeting to which the requests relate and hold shares in the company on which there has been paid up an average sum, per member, of at least £100. 40
- (4) A request –
  - (a) may be in hard copy form or in electronic form,
  - (b) must identify the resolution of which notice is to be given,
  - (c) must be authenticated by the person or persons making it, and 45

- (d) must be received by the company not later than –
  - (i) 6 weeks before the annual general meeting to which the requests relate, or
  - (ii) if later, the time at which notice is given of that meeting.

**318 Public companies: company’s duty to circulate members’ resolutions for AGMs** 5

- (1) A company that is required under section 317 to give notice of a resolution must send a copy of it to each member of the company entitled to receive notice of the annual general meeting –
  - (a) in the same manner as notice of the meeting, and 10
  - (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.
- (2) Subsection (1) has effect subject to section 319(2) (deposit or tender of sum in respect of expenses of circulation).
- (3) The business which may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with this section. 15
- (4) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine; 20
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

**319 Public companies: expenses of circulating members’ resolutions for AGM**

- (1) The expenses of the company in complying with section 318 need not be paid by the members who requested the circulation of the resolution if requests sufficient to require the company to circulate it are received before the end of the financial year preceding the meeting. 25
- (2) Otherwise –
  - (a) the expenses of the company in complying with that section must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise, and 30
  - (b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than –
    - (i) six weeks before the annual general meeting to which the requests relate, or 35
    - (ii) if later, the time at which notice is given of that meeting,
 a sum reasonably sufficient to meet its expenses in complying with that section.

## CHAPTER 5

### ADDITIONAL REQUIREMENTS FOR QUOTED COMPANIES

#### *Website publication of poll results*

#### **320 Results of poll to be made available on website**

- (1) Where a poll is taken at a general meeting of a quoted company, the company must ensure that the following information is made available on a website –
  - (a) the date of the meeting,
  - (b) the text of the resolution or, as the case may be, a description of the subject matter of the poll,
  - (c) the number of votes cast in favour, and
  - (d) the number of votes cast against.
- (2) The provisions of section 332 (requirements as to website availability) apply.
- (3) In the event of default in complying with this section (or with the requirements of section 332 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Failure to comply with this section (or the requirements of section 332) does not affect the validity of –
  - (a) the poll, or
  - (b) the resolution or other business (if passed or agreed to) to which the poll relates.
- (6) This section only applies to polls taken after this section comes into force.

#### *Independent report on poll*

#### **321 Members' power to require independent report on poll**

- (1) The members of a quoted company may require the directors to obtain an independent report on any poll taken, or to be taken, at a general meeting of the company.
- (2) The directors are required to obtain an independent report if they receive requests to do so from –
  - (a) members representing not less than 5% of the total voting rights of all the members who have a right to vote on the matter to which the poll relates (excluding any voting rights attached to any shares in the company held as treasury shares), or
  - (b) not less than 100 members who have a right to vote on the matter to which the poll relates and hold shares in the company on which there has been paid up an average sum, per member, of not less than £100.
- (3) Where the requests relate to more than one poll, subsection (2) must be satisfied in relation to each of them.
- (4) A request –

- (a) may be in hard copy form or in electronic form,
- (b) must identify the poll or polls to which it relates,
- (c) must be authenticated by the person or persons making it, and
- (d) must be received by the company not later than one week after the date on which the poll is taken. 5

### 322 Appointment of independent assessor

- (1) Directors who are required under section 321 to obtain an independent report on a poll or polls must appoint a person they consider to be appropriate (an “independent assessor”) to prepare a report for the company on it or them.
- (2) The appointment must be made within one week after the company being required to obtain the report. 10
- (3) The directors must not appoint a person who –
  - (a) does not meet the independence requirement in section 323, or
  - (b) has another role in relation to any poll on which he is to report (including, in particular, a role in connection with collecting or counting votes or with the appointment of proxies). 15
- (4) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 20
- (6) If at the meeting no poll on which a report is required is taken –
  - (a) the directors are not required to obtain a report from the independent assessor, and
  - (b) his appointment ceases (but without prejudice to any right to be paid for work done before the appointment ceased). 25

### 323 Independence requirement

- (1) A person may not be appointed as an independent assessor –
  - (a) if he is –
    - (i) an officer or employee of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; 30
  - (b) if he is –
    - (i) an officer or employee of an associated undertaking of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; 35
  - (c) if there exists between –
    - (i) the person or an associate of his, and
    - (ii) the company or an associated undertaking of the company, a connection of any such description as may be specified by regulations made by the Secretary of State. 40
- (2) An auditor of the company is not regarded as an officer or employee of the company for this purpose.

- (3) In this section –  
    “associated undertaking” means –  
        (a) a parent undertaking or subsidiary undertaking of the company, or  
        (b) a subsidiary undertaking of a parent undertaking of the company; and  
    “associate” has the meaning given by section 324. 5
- (4) Regulations under this section are subject to negative resolution procedure.

### **324 Meaning of “associate”**

- (1) This section defines “associate” for the purposes of section 323 (independence requirement). 10
- (2) In relation to an individual, “associate” means –  
    (a) that individual’s spouse or 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. 15
- (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. 20
- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means –  
    (a) any body corporate of which that partnership is a director,  
    (b) any employee of or partner in that partnership, and  
    (c) any person who is an associate of a partner in that partnership. 25
- (5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”. 30

### **325 Effect of appointment of a partnership**

- (1) This section applies where a partnership that is not a legal person under the law by which it is governed is appointed as an independent assessor.
- (2) Unless a contrary intention appears, the appointment is 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 partnership that succeeds to the practice of that partnership, or  
    (b) any other 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 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 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 company be treated as extending to a partnership, or other person, who succeeds to – 10
- (a) the business of the former partnership, or
  - (b) such part of it as is agreed by the company is to be treated as comprising the appointment.

### 326 The independent assessor's report

- (1) The report of the independent assessor must state his opinion whether – 15
- (a) the procedures adopted in connection with the poll or polls were adequate;
  - (b) the votes cast (including proxy votes) were fairly and accurately recorded and counted;
  - (c) the validity of members' appointments of proxies was fairly assessed; 20
  - (d) the notice of the meeting complied with section 304 (notice of meeting to contain statement of rights to appoint proxy);
  - (e) section 305 (company-sponsored invitations to appoint proxies) was complied with in relation to the meeting.
- (2) The report must give his reasons for the opinions stated. 25
- (3) If he is unable to form an opinion on any of those matters, the report must record that fact and state the reasons for it.
- (4) The report must state the name of the independent assessor.

### 327 Rights of independent assessor: right to attend meeting etc

- (1) Where an independent assessor has been appointed to report on a poll, he is entitled to attend – 30
- (a) the meeting at which the poll may be taken, and
  - (b) any subsequent proceedings in connection with the poll.
- (2) He is also entitled to be provided by the company with a copy of – 35
- (a) the notice of the meeting, and
  - (b) any other communication provided by the company in connection with the meeting to persons who have a right to vote on the matter to which the poll relates.
- (3) The rights conferred by this section are only to be exercised to the extent that the independent assessor considers necessary for the preparation of his report. 40
- (4) If the independent assessor is a firm, the right under subsection (1) to attend the meeting and any subsequent proceedings in connection with the poll is exercisable by an individual authorised by the firm in writing to act as its representative for that purpose.



### 328 Rights of independent assessor: right to information

- (1) The independent assessor is entitled to access to the company's records relating to –
  - (a) any poll on which he is to report;
  - (b) the meeting at which the poll or polls may be, or were, taken. 5
- (2) The independent assessor may require anyone who at any material time was –
  - (a) a director or secretary of the company,
  - (b) an employee of the company,
  - (c) a person holding or accountable for any of the company's records,
  - (d) a member of the company, or 10
  - (e) an agent of the company,to provide him with information or explanations for the purpose of preparing his report.
- (3) For this purpose “agent” includes the company's bankers, solicitors and auditor. 15
- (4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 329 (offences relating to provision of information).
- (5) A person is not required by this section to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings. 20

### 329 Offences relating to provision of information

- (1) A person who fails to comply with a requirement under section 328 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanation. 25
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person commits an offence who knowingly or recklessly makes to an independent assessor a statement (oral or written) that –
  - (a) conveys or purports to convey any information or explanations which the independent assessor requires, or is entitled to require, under section 328, and
  - (b) is misleading, false or deceptive in a material particular. 30
- (4) A person guilty of an offence under subsection (3) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 40
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

- (5) Nothing in this section affects any right of an auditor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 327 or 328.

### **330 Information to be made available on website**

- (1) Where an independent assessor has been appointed to report on a poll, the company must ensure that the following information is made available on a website – 5
- (a) the fact of his appointment,
  - (b) his identity,
  - (c) the text of the resolution or, as the case may be, a description of the subject matter of the poll to which his appointment relates, and 10
  - (d) a copy of a report by him which complies with section 326.
- (2) The provisions of section 332 (requirements as to website availability) apply.
- (3) In the event of default in complying with this section (or with the requirements of section 332 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default. 15
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Failure to comply with this section (or the requirements of section 332) does not affect the validity of – 20
- (a) the poll, or
  - (b) the resolution or other business (if passed or agreed to) to which the poll relates.

### *Supplementary*

### **331 Application of provisions to class meetings** 25

- (1) The provisions of –  
 section 320 (results of poll to be made available on website), and  
 sections 321 to 330 (independent report on poll),  
 apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company. 30
- (2) For the purposes of this section –
- (a) any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and 35
  - (b) references to the variation of rights attached to a class of shares include references to their abrogation.

### **332 Requirements as to website availability** 40

- (1) The following provisions apply for the purposes of –  
 section 320 (results of poll to be made available on website), and

- section 330 (report of independent observer to be made available on website).
- (2) The information must be made available on a website that –
- (a) is maintained by or on behalf of the company, and
  - (b) identifies the company in question. 5
- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted.
- (4) The information –
- (a) must be made available as soon as reasonably practicable, and 10
  - (b) must be kept available throughout the period of two years beginning with the date on which it is first made available on a website in accordance with this section.
- (5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if – 15
- (a) the information is made available on the website for part of that period, and
  - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.
- 333 Power to limit or extend the types of company to which provisions of this Chapter apply 20**
- (1) The Secretary of State may by regulations –
- (a) limit the types of company to which some or all of the provisions of this Chapter apply, or
  - (b) extend some or all of the provisions of this Chapter to additional types of company. 25
- (2) Regulations under this section extending the application of any provision of this Chapter are subject to affirmative resolution procedure.
- (3) Any other regulations under this section are subject to negative resolution procedure. 30
- (4) Regulations under this section may –
- (a) amend the provisions of this Chapter (apart from this section);
  - (b) repeal and re-enact provisions of this Chapter with modifications of form or arrangement, whether or not they are modified in substance;
  - (c) contain such consequential, incidental and supplementary provisions (including provisions amending, repealing or revoking enactments) as the Secretary of State thinks fit. 35

## CHAPTER 6

### RECORDS OF RESOLUTIONS AND MEETINGS

- 334 Records of resolutions and meetings etc 40**
- (1) Every company must keep records comprising –

- 
- (a) copies of all resolutions of members passed otherwise than at general meetings,
- (b) minutes of all proceedings of general meetings, and
- (c) details provided to the company in accordance with section 336 (decisions of sole member). 5
- (2) The records must be kept for at least ten years from the date of the resolution, meeting or decision (as appropriate).
- (3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 10
- 335 Records as evidence of resolutions etc**
- (1) This section applies to the records kept in accordance with section 334. 15
- (2) The record of a resolution passed otherwise than at a general meeting, if purporting to be signed by a director of the company or by the company secretary, is evidence (in Scotland, sufficient evidence) of the passing of the resolution.
- (3) Where there is a record of a written resolution of a private company, the requirements of this Act with respect to the passing of the resolution are deemed to be complied with unless the contrary is proved. 20
- (4) The minutes of proceedings of a general meeting, if purporting to be signed by the chairman of that meeting or by the chairman of the next general meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting. 25
- (5) Where there is a record of proceedings of a general meeting of a company, then, until the contrary is proved –
- (a) the meeting is deemed duly held and convened,
- (b) all proceedings at the meeting are deemed to have duly taken place, and 30
- (c) all appointments at the meeting are deemed valid.
- 336 Records of decisions by sole member**
- (1) This section applies to a company limited by shares or by guarantee that has only one member. 35
- (2) Where the member takes any decision that –
- (a) may be taken by the company in general meeting, and
- (b) has effect as if agreed by the company in general meeting,
- he must (unless that decision is taken by way of a written resolution) provide the company with details of that decision. 40
- (3) If a person fails to comply with this section he commits an offence.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

- (5) Failure to comply with this section does not affect the validity of any decision referred to in subsection (2).

### **337 Inspection of records of resolutions and meetings**

- (1) The company must at all times –
- (a) keep available for inspection at its registered office the records referred to in section 334 (records of resolutions etc) relating to the previous ten years, and
  - (b) open those records to inspection by any member without charge.
- (2) Any member is entitled on payment of such fee as may be prescribed to be furnished with a copy of any of those records.
- (3) If an inspection required under this section is refused or if a copy requested under this section is not sent, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, to a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) In the case of any such refusal or default, the court may by order compel an immediate inspection of the records or direct that the copies required be sent to the persons who requested them.

### **338 Records of resolutions and meetings of class of members**

The provisions of this Chapter apply (with necessary modifications) in relation to resolutions and meetings of –

- (a) holders of a class of shares, and
- (b) in the case of a company without a share capital, a class of members, as they apply in relation to resolutions of members generally and to general meetings.

## **CHAPTER 7**

### **SUPPLEMENTARY PROVISIONS**

### **339 Meaning of “quoted company”** 30

In this Part “quoted company” has the same meaning as in Part 15 of this Act.

## **PART 14**

### **CONTROL OF POLITICAL DONATIONS AND EXPENDITURE**

#### *Introductory*

### **340 Introductory** 35

This Part has effect for controlling –

- (a) political donations made by companies to political parties, to other political organisations and to independent election candidates, and
- (b) political expenditure incurred by companies.

*Donations and expenditure to which this Part applies*

<b>341</b>	<b>Political parties, organisations etc to which this Part applies</b>	5
(1)	This Part applies to a political party if –	
	(a) it is registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41), or	
	(b) it carries on, or proposes to carry on, activities for the purposes of or in connection with the participation of the party in any election or elections to public office held in a member State other than the United Kingdom.	10
(2)	This Part applies to an organisation (a “political organisation”) if it carries on, or proposes to carry on, activities that are capable of being reasonably regarded as intended –	15
	(a) to affect public support for a political party to which, or an independent election candidate to whom, this Part applies, or	
	(b) to influence voters in relation to any national or regional referendum held under the law of the United Kingdom or another member State.	
(3)	This Part applies to an independent election candidate at any election to public office held in the United Kingdom or another member State.	20
(4)	This Part applies in relation to political expenditure that is capable of being reasonably regarded as intended to affect public support for –	
	(a) a political party or other political organisation to which this Part applies, or	25
	(b) an independent election candidate to whom this Part applies.	
(5)	Any reference in the following provisions of this Part to a political party, political organisation or independent election candidate, or to political expenditure, is to a party, organisation, independent candidate or expenditure to which this Part applies.	30
<b>342</b>	<b>Meaning of “political donation”</b>	
(1)	The following provisions have effect for the purposes of this Part as regards the meaning of “political donation”.	
(2)	In relation to a political party or other political organisation –	
	(a) “political donation” means anything that in accordance with sections 50 to 52 of the Political Parties, Elections and Referendums Act 2000 –	35
	(i) constitutes a donation for the purposes of Chapter 1 of Part 4 of that Act (control of donations to registered parties), or	
	(ii) would constitute such a donation reading references in those sections to a registered party as references to any political party or other political organisation,	40
	and	
	(b) section 53 of that Act applies, in the same way, for the purpose of determining the value of a donation.	

- (3) In relation to an independent election candidate –
- (a) “political donation” means anything that, in accordance with sections 50 to 52 of that Act, would constitute a donation for the purposes of Chapter 1 of Part 4 of that Act (control of donations to registered parties) reading references in those sections to a registered party as references to the independent election candidate, and 5
  - (b) section 53 of that Act applies, in the same way, for the purpose of determining the value of a donation.

**343 Meaning of “political expenditure”** 10

- (1) In this Part “political expenditure”, in relation to a company, means expenditure incurred by the company on –
- (a) the preparation, publication or dissemination of advertising or other promotional or publicity material – 15
    - (i) of whatever nature, and
    - (ii) however published or otherwise disseminated, that, at the time of publication or dissemination, is capable of being reasonably regarded as intended to affect public support for a political party or an independent election candidate, or
  - (b) activities on the part of the company that are capable of being reasonably regarded as intended – 20
    - (i) to affect public support for a political party or an independent election candidate, or
    - (ii) to influence voters in relation to any national or regional referendum held under the law of a member State. 25
- (2) For the purposes of this Part a political donation does not count as political expenditure.

*Authorisation required for donations or expenditure*

**344 Authorisation required for donations or expenditure**

- (1) A company must not – 30
- (a) make a political donation to a political party or other political organisation, or to an independent election candidate, or
  - (b) incur any political expenditure,
- unless the donation or expenditure is authorised in accordance with the following provisions. 35
- (2) The donation or expenditure must be authorised –
- (a) in the case of a company that is not a subsidiary of another company, by a resolution of the members of the company;
  - (b) in the case of a company that is a subsidiary of another company by – 40
    - (i) a resolution of the members of the company, and
    - (ii) a resolution of the members of any relevant holding company.
- (3) No resolution is required on the part of a company that is a wholly-owned subsidiary of a UK company.

- (4) For the purposes of subsection (2)(b)(ii) a “relevant holding company” means a company that, at the time the donation was made or the expenditure was incurred –
- (a) was a holding company of the company by which the donation was made or the expenditure was incurred, 5
  - (b) was a UK company, and
  - (c) was not a subsidiary of –
    - (i) another UK company, or
    - (ii) a body corporate which was itself a subsidiary of a UK company. 10
- (5) For the purposes of this section a “UK company” means a body corporate that –
- (a) is a company as defined in section 1 of this Act, or
  - (b) is registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register). 15
- (6) The resolution or resolutions required by this section –
- (a) must comply with section 345 (form of authorising resolution), and
  - (b) must be passed before the donation is made or the expenditure incurred.
- (7) Nothing in this section enables a company to be authorised to do anything that it could not lawfully do apart from this section. 20

### 345 Form of authorising resolution

- (1) A resolution conferring authorisation for the purposes of this Part may relate to –
- (a) the company passing the resolution, 25
  - (b) one or more subsidiaries of that company, or
  - (c) the company passing the resolution and one or more subsidiaries of that company.
- (2) For each company to which it relates the resolution may authorise donations or expenditure under one or more of the following heads – 30
- (a) donations to political parties or independent election candidates;
  - (b) donations to political organisations other than political parties;
  - (c) political expenditure.
- (3) The resolution must be expressed in general terms conforming with subsection (2) and must not purport to authorise particular donations or expenditure. 35
- (4) For each of the companies to which it relates and each of the specified heads the resolution must authorise donations or, as the case may be, expenditure up to a specified amount in the period for which the resolution has effect (see section 347).

### 346 Majority required for authorising resolution 40

- (1) A resolution conferring authorisation for the purposes of this Part may be an ordinary resolution.
- (2) This is subject to anything in the company’s articles requiring a higher majority (or unanimity).



### 347 Period for which resolution has effect

- (1) A resolution conferring authorisation for the purposes of this Part has effect for a period of four years beginning with the date on which it is passed unless the directors determine, or the articles require, that it is to have effect for a shorter period beginning with that date. 5
- (2) The power of the directors to make a determination under this section is subject to any provision of the articles that operates to prevent them from doing so.

#### *Remedies in case of unauthorised donations or expenditure*

### 348 Liability of directors in case of unauthorised donation or expenditure

- (1) This section applies where a company has made a political donation or incurred political expenditure without the authorisation required by this Part. 10
  - (2) The responsible directors are jointly and severally liable—
    - (a) to make good to the company the amount of the unauthorised donation or expenditure, with interest, and
    - (b) to compensate the company for any loss or damage sustained by it as a result of the unauthorised donation or expenditure having been made. 15
  - (3) The responsible directors are—
    - (a) those who, at the time the unauthorised donation was made or the unauthorised expenditure was incurred, were directors of the company by which the donation was made or the expenditure was incurred, and 20
    - (b) where that company was a subsidiary of another company, those who at that time were directors of any relevant holding company.
  - (4) For the purposes of subsection (3)(b) a “relevant holding company” means a company that, at the time the donation was made or the expenditure was incurred—
    - (a) was a holding company of the company by which the donation was made or the expenditure was incurred,
    - (b) was a UK company, and
    - (c) was not a subsidiary of—
      - (i) another UK company, or 30
      - (ii) a body corporate which was itself a subsidiary of a UK company.
  - (5) For the purposes of this section a “UK company” is a body corporate which—
    - (a) is a company as defined in section 1 of this Act, or
    - (b) is registered under the Companies Acts by virtue of section 663 (bodies not formed under Companies Acts but authorised to register). 35
  - (6) The interest referred to in subsection (2)(a) is interest on the amount of the unauthorised donation or expenditure, so far as not made good to the company—
    - (a) in respect of the period beginning with the date when the donation was made or the expenditure was incurred, and 40
    - (b) at such rate as the Secretary of State may prescribe by regulations.
- Section 357(2) (construction of references to date when donation made or expenditure incurred) does not apply for the purposes of this subsection.

- (7) Where only part of a donation or expenditure was unauthorised, this section applies only to so much of it as was unauthorised.

### 349 Enforcement of directors' liabilities by shareholder action

- (1) Any liability of any person under section 348 is enforceable by proceedings brought under this section in the name of the company by an authorised group of members of the company. 5  
This is in addition to being enforceable by proceedings brought by the company.
- (2) An “authorised group” means— 10
- (a) the holders of not less than 5% in nominal value of the company’s issued share capital,
  - (b) if the company is not limited by shares, not less than 5% of its members, or
  - (c) not less than 50 of the company’s members.
- (3) A group of members of a company may not bring proceedings under this section unless— 15
- (a) the group has given written notice to the company stating—
    - (i) the cause of action and a summary of the facts on which the proceedings are to be based,
    - (ii) the names and addresses of the members of the company comprising the group, and 20
    - (iii) the grounds on which it is alleged that those members constitute an authorised group; and
  - (b) not less than 28 days have elapsed between the date of the giving of the notice to the company and the bringing of the proceedings. 25
- (4) Where such a notice is given to a company, any director may apply to the court within the period of 28 days beginning with the date of the giving of the notice for an order directing that the proposed proceedings shall not be brought, on one or more of the following grounds— 30
- (a) that the unauthorised amount has been made good to the company;
  - (b) that proceedings to enforce the liability have been brought, and are being pursued with due diligence, by the company;
  - (c) that the members proposing to bring proceedings under this section do not constitute an authorised group.
- (5) Where an application is made on the ground mentioned in subsection (4)(b), the court may as an alternative to directing that the proposed proceedings under this section are not to be brought, direct— 35
- (a) that such proceedings may be brought on such terms and conditions as the court thinks fit, and
  - (b) that the proceedings brought by the company— 40
    - (i) shall be discontinued, or
    - (ii) may be continued on such terms and conditions as the court thinks fit.
- (6) The members by whom proceedings are brought under this section owe the same duties to the company in relation to the proceedings as would be owed by the directors of the company if the proceedings were being brought by the company itself. 45

But proceedings to enforce any such duty may be brought by the company only with the permission of the court.

- (7) Proceedings brought under this section may not be discontinued or settled by the group except with the permission of the court, which may be given on such terms as the court thinks fit. 5
- (8) Nothing in this section affects any right a member of a company may have to bring or continue a claim under Part 11 of this Act (derivative claims or proceedings by members).

### 350 Costs of shareholder action

- (1) This section applies in relation to proceedings brought under section 349 by an authorised group of members of a company (“the group”). 10
- (2) The group may apply to the court for an order directing the company to indemnify the group in respect of costs incurred or to be incurred by the group in connection with the proceedings.  
The court may make such an order on such terms as it thinks fit. 15
- (3) The group is not entitled to be paid any such costs out of the assets of the company except by virtue of such an order.
- (4) If no such order has been made with respect to the proceedings, then –  
(a) if the company is awarded costs in connection with the proceedings, or it is agreed that costs incurred by the company in connection with the proceedings should be paid by any defendant, the costs shall be paid to the group; and 20  
(b) if any defendant is awarded costs in connection with the proceedings, or it is agreed that any defendant should be paid costs incurred by him in connection with the proceedings, the costs shall be paid by the group. 25
- (5) In the application of this section to Scotland for “costs” read “expenses” and for “defendant” read “defender”.

### 351 Information for purposes of shareholder action

- (1) Where proceedings have been brought under section 349 by an authorised group, the group is entitled to require the company to provide it with all information relating to the subject matter of the proceedings that is in the company’s possession or under its control or which is reasonably obtainable by it. 30
- (2) If the company, having been required by the group to do so, refuses to provide the group with all or any of that information, the court may, on an application made by the group, make an order directing – 35  
(a) the company, and  
(b) any of its officers or employees specified in the application,  
to provide the group with the information in question in such form and by such means as the court may direct. 40

*Exemptions***352 Trade unions**

- (1) A trade union is not a political organisation for the purposes of this Part.
- (2) For this purpose “trade union” has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or Article 3 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)). 5

**353 Subscription for membership of trade association**

- (1) A subscription paid to a trade association for membership of the association is not a political donation for the purposes of this Part.
- (2) For this purpose – 10  
     “trade association” means an organisation formed for the purpose of furthering the trade interests of its members, or of persons represented by its members, and  
     “subscription” does not include a payment to the association to the extent that it is made for the purpose of financing any particular activity of the association. 15

**354 All-party parliamentary groups**

- (1) An all-party parliamentary group is not a political organisation for the purposes of this Part.
- (2) An “all-party parliamentary group” means an all-party group composed of members of one or both of the Houses of Parliament (or of such members and other persons). 20

**355 Political expenditure exempted by order**

- (1) Authorisation under this Part is not needed for political expenditure that is exempt by virtue of an order of the Secretary of State under this section. 25
- (2) An order may confer an exemption in relation to –  
     (a) companies of any description or category specified in the order, or  
     (b) expenditure of any description or category so specified (whether framed by reference to goods, services or other matters in respect of which such expenditure is incurred or otherwise), 30  
 or both.
- (3) If or to the extent that expenditure is exempt from the requirement of authorisation under this Part by virtue of an order under this section, it shall be disregarded in determining what donations are authorised by any resolution of the company passed for the purposes of this Part. 35
- (4) An order under this section is subject to affirmative resolution procedure.

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

- (1) Authorisation under this Part is not needed for a donation except to the extent that the total amount of –

- (a) that donation, and
  - (b) other relevant donations made in the period of 12 months ending with the date on which that donation is made, exceeds £5,000.
- (2) In this section – 5  
“donation” means a donation to a political party or other political organisation or to an independent election candidate; and  
“other relevant donations” means –
- (a) in relation to a donation made by a company that is not a subsidiary, donations made by that company or by any of its subsidiaries; 10
  - (b) in relation to a company that is a subsidiary, donations made by that company, by any holding company of that company or by any other subsidiary of any such holding company.
- (3) If or to the extent that a donation is exempt by virtue of this section from the requirement of authorisation under this Part, it shall be disregarded in determining what donations are authorised by any resolution passed for the purposes of this Part. 15

*Supplementary provisions*

**357 Minor definitions** 20

- (1) In this Part –  
“director” includes shadow director; and  
“organisation” includes any body corporate or unincorporated association and any combination of persons.
- (2) Except as otherwise provided, any reference in this Part to the time at which a donation is made or expenditure is incurred is, in a case where the donation is made or expenditure incurred in pursuance of a contract, any earlier time at which that contract is entered into by the company. 25

**PART 15**

ACCOUNTS AND REPORTS 30

**CHAPTER 1**

INTRODUCTION

*General*

**358 Scheme of this Part**

- (1) The requirements of this Part as to accounts and reports apply in relation to each financial year of a company. 35
- (2) In certain respects different provisions apply to different kinds of company.
- (3) The main distinctions for this purpose are –

- (a) between companies subject to the small companies regime (see section 359) and companies that are not subject to that regime; and
  - (b) between quoted companies (see section 363) and companies that are not quoted.
- (4) In this Part, where provisions do not apply to all kinds of company – 5
- (a) provisions applying to companies subject to the small companies regime appear before the provisions applying to other companies,
  - (b) provisions applying to private companies appear before the provisions applying to public companies, and
  - (c) provisions applying to quoted companies appear after the provisions applying to other companies. 10

*Companies subject to the small companies regime*

**359 Companies subject to the small companies regime**

- The small companies regime for accounts and reports applies to a company for a financial year in relation to which the company – 15
- (a) qualifies as small (see sections 360 and 361), and
  - (b) is not excluded from the regime (see section 362).

**360 Companies qualifying as small: general**

- (1) A company qualifies as small in relation to a financial year if the qualifying conditions are met – 20
- (a) in the case of the company’s first financial year, in that year, and
  - (b) in the case of any subsequent financial year, in that year and the preceding year.
- (2) A company is treated as qualifying as small in relation to a financial year (other than its first financial year) – 25
- (a) if the qualifying conditions are not met in relation to the financial year in question but it qualified under subsection (1) in relation to the previous financial year; or
  - (b) if the qualifying conditions are met in relation to the financial year in question and it was treated as qualifying in relation to the previous year by virtue of paragraph (a); or 30
  - (c) if the qualifying conditions are not met in relation to the financial year in question but it qualified under paragraph (b) in relation to the previous financial year.
- (3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements – 35

1. Turnover	Not more than £5.6 million
2. Balance sheet total	Not more than £2.8 million
3. Number of employees	Not more than 50

- (4) For a period that is a company’s financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted.
- (5) The balance sheet total means the aggregate of the amounts shown as assets in the company’s balance sheet.
- (6) The number of employees means the average number of persons employed by the company in the year, determined as follows –
  - (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),
  - (b) add together the monthly totals, and
  - (c) divide by the number of months in the financial year.
- (7) This section is subject to section 361 (companies qualifying as small: parent companies).

**361 Companies qualifying as small: parent companies**

- (1) A parent company qualifies as a small company in relation to a financial year only if the group headed by it qualifies as a small group.
- (2) A group qualifies as small in relation to a financial year if the qualifying conditions are met –
  - (a) in the case of the parent company’s first financial year, in that year, and
  - (b) in the case of any subsequent financial year, in that year and the preceding year.
- (3) A group is treated as qualifying as small in relation to a financial year (other than the parent company’s first financial year) –
  - (a) if the qualifying conditions are not met in relation to the financial year in question but it qualified under subsection (2) in relation to the previous financial year; or
  - (b) if the qualifying conditions are met in relation to the financial year in question and it was treated as qualifying in relation to the previous year by virtue of paragraph (a); or
  - (c) if the qualifying conditions are not met in relation to the financial year in question but it qualified under paragraph (b) in relation to the previous financial year.
- (4) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements –
 

1. Aggregate turnover	Not more than £5.6 million net (or £6.72 million gross)	35
2. Aggregate balance sheet total	Not more than £2.8 million net (or £3.36 million gross)	
3. Aggregate number of employees	Not more than 50	
- (5) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 360 for each member of the group.
- (6) In relation to the aggregate figures for turnover and balance sheet total –

“net” means after any set-offs and other adjustments made to eliminate group transactions –

- (a) in the case of Companies Act accounts, in accordance with regulations under section 382,
- (b) in the case of IAS accounts, in accordance with international accounting standards; and

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“gross” means without those set-offs and other adjustments.

A company may satisfy the relevant requirements on the basis of either the net or the gross figure.

- (7) The figures for each subsidiary undertaking shall be those included in its individual accounts for the relevant financial year, that is –
- (a) if its financial year ends with that of the parent company, that financial year, and
  - (b) if not, its financial year ending last before the end of the financial year of the parent company.

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If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

### 362 Companies excluded from the small companies regime

- (1) The small companies regime does not apply to a company that is, or was at any time within the financial year to which the accounts relate –
- (a) a public company,
  - (b) a company that –
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, or
    - (ii) carries on insurance market activity, or
  - (c) a member of an ineligible group.
- (2) A group is ineligible if any of its members is –
- (a) a public company,
  - (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market in an EEA State, or
  - (c) a person who –
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or
    - (ii) carries on insurance market activity.

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*Quoted and unquoted companies*

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### 363 Quoted and unquoted companies

- (1) For the purposes of this Part a company is a quoted company in relation to a financial year if it is a quoted company immediately before the end of the accounting reference period by reference to which that financial year was determined.
- (2) A “quoted company” means a company whose equity share capital –
- (a) has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000, or
  - (b) is officially listed in an EEA State, or

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- (c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.
- In paragraph (a) “the official list” has the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8).
- (3) An “unquoted company” means a company that is not a quoted company. 5
- (4) The Secretary of State may by regulations amend or replace the provisions of subsections (1) to (2) so as to limit or extend the application of some or all of the provisions of this Part that are expressed to apply to quoted companies.
- (5) Regulations under this section extending the application of any such provision of this Part are subject to affirmative resolution procedure. 10
- (6) Any other regulations under this section are subject to negative resolution procedure.

## CHAPTER 2

### ACCOUNTING RECORDS

- 364 Duty to keep accounting records** 15
- (1) Every company must keep adequate accounting records.
- (2) Adequate accounting records means records that are sufficient –
- (a) to show and explain the company’s transactions,
  - (b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and 20
  - (c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).
- (3) Accounting records must, in particular, contain –
- (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and 25
  - (b) a record of the assets and liabilities of the company.
- (4) If the company’s business involves dealing in goods, the accounting records must contain –
- (a) statements of stock held by the company at the end of each financial year of the company,
  - (b) all statements of stocktakings from which any statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and
  - (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified. 35
- (5) A parent company that has a subsidiary undertaking in relation to which the above requirements do not apply must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation). 40

### **365 Duty to keep accounting records: offence**

- (1) If a company fails to comply with any provision of section 364 (duty to keep accounting records), an offence is committed by every officer of the company who is in default.
- (2) It is a defence for a person charged with such an offence to show that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable. 5
- (3) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both); 10
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both). 15

### **366 Where and for how long records to be kept**

- (1) A company's accounting records –
  - (a) must be kept at its registered office or such other place as the directors think fit, and
  - (b) must at all times be open to inspection by the company's officers.
- (2) If accounting records are kept at a place outside the United Kingdom, accounts and returns with respect to the business dealt with in the accounting records so kept must be sent to, and kept at, a place in the United Kingdom, and must at all times be open to such inspection. 25
- (3) The accounts and returns to be sent to the United Kingdom must be such as to –
  - (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and
  - (b) enable the directors to ensure that the accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation). 30
- (4) Accounting records that a company is required by section 364 to keep must be preserved by it –
  - (a) in the case of a private company, for three years from the date on which they are made;
  - (b) in the case of a public company, for six years from the date on which they are made. 35
- (5) Subsection (4) is subject to any provision contained in rules made under section 411 of the Insolvency Act 1986 (c. 45) (company insolvency rules) or Article 359 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)). 40

**367 Where and for how long records to be kept: offences**

- (1) If a company fails to comply with any provision of subsections (1) to (3) of section 366 (requirements as to keeping of accounting records), an offence is committed by every officer of the company who is in default.
- (2) It is a defence for a person charged with such an offence to show that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable. 5
- (3) An officer of a company commits an offence if he –
  - (a) fails to take all reasonable steps for securing compliance by the company with subsection (4) of that section (period for which records to be preserved), or 10
  - (b) intentionally causes any default by the company under that subsection.
- (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); 15
  - (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). 20

**CHAPTER 3**

**A COMPANY'S FINANCIAL YEAR**

**368 A company's financial year** 25

- (1) A company's financial year is determined as follows.
- (2) Its first financial year –
  - (a) begins with the first day of its first accounting reference period, and
  - (b) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine. 30
- (3) Subsequent financial years –
  - (a) begin with the day immediately following the end of the company's previous financial year, and
  - (b) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine. 35
- (4) In relation to an undertaking that is not a company, references in this Act to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not. 40

- (5) The directors of a parent company must secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company’s own financial year.

### **369 Accounting reference periods and accounting reference date**

- (1) A company’s accounting reference periods are determined according to its accounting reference date in each calendar year. 5
- (2) The accounting reference date of a company incorporated in Great Britain before 1st April 1996 is –
- (a) the date specified by notice to the registrar in accordance with section 224(2) of the Companies Act 1985 (c. 6) (notice specifying accounting reference date given within nine months of incorporation), or 10
  - (b) failing such notice –
    - (i) in the case of a company incorporated before 1st April 1990, 31st March, and
    - (ii) in the case of a company incorporated on or after 1st April 1990, the last day of the month in which the anniversary of its incorporation falls. 15
- (3) The accounting reference date of a company incorporated in Northern Ireland before 22nd August 1997 is –
- (a) the date specified by notice to the registrar in accordance with article 232(2) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (notice specifying accounting reference date given within nine months of incorporation), or 20
  - (b) failing such notice –
    - (i) in the case of a company incorporated before the coming into operation of Article 5 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)), 31st March, and
    - (ii) in the case of a company incorporated after the coming into operation of that Article, the last day of the month in which the anniversary of its incorporation falls. 30
- (4) The accounting reference date of a company incorporated –
- (a) in Great Britain on or after 1st April 1996 and before the commencement of this Act,
  - (b) in Northern Ireland on or after 22nd August 1997 and before the commencement of this Act, or 35
  - (c) after the commencement of this Act,
- is the last day of the month in which the anniversary of its incorporation falls.
- (5) A company’s first accounting reference period is the period of more than six months, but not more than 18 months, beginning with the date of its incorporation and ending with its accounting reference date. 40
- (6) Its subsequent accounting reference periods are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.
- (7) This section has effect subject to the provisions of section 370 (alteration of accounting reference date). 45

### 370 Alteration of accounting reference date

- (1) A company may by notice given to the registrar specify a new accounting reference date having effect in relation to –
- (a) the company’s current accounting reference period and subsequent periods, or 5
  - (b) the company’s previous accounting reference period and subsequent periods.
- A company’s “previous accounting reference period” means the one immediately preceding its current accounting reference period.
- (2) The notice must state whether the current or previous accounting reference period – 10
- (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or
  - (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period. 15
- (3) A notice extending a company’s current or previous accounting reference period is not effective if given less than five years after the end of an earlier accounting reference period of the company that was extended under this section. 20
- This does not apply –
- (a) to a notice given by a company that is a subsidiary undertaking or parent undertaking of another EEA undertaking if the new accounting reference date coincides with that of the other EEA undertaking or, where that undertaking is not a company, with the last day of its financial year, or 25
  - (b) where the company is in administration under Part 2 of the Insolvency Act 1986 (c. 45) or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (c) where the Secretary of State directs that it should not apply, which he may do with respect to a notice that has been given or that may be given. 30
- (4) A notice under this section may not be given in respect of a previous accounting reference period if the period for filing accounts and reports for the financial year determined by reference to that accounting reference period has already expired. 35
- (5) An accounting reference period may not be extended so as to exceed 18 months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit. 40
- This does not apply where the company is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (6) In this section “EEA undertaking” means an undertaking established under the law of any part of the United Kingdom or the law of any other EEA State. 45

## CHAPTER 4

## ANNUAL ACCOUNTS

*General***371 Accounts to give true and fair view**

- (1) The directors of a company must not approve accounts for the purposes of this Chapter unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss – 5
- (a) in the case of the company’s individual accounts, of the company;
  - (b) in the case of the company’s group accounts, of the group as a whole.
- In paragraph (b) “the group” means the company and its subsidiary undertakings included in the consolidation. 10
- (2) The auditor of a company in carrying out his functions under this Act in relation to the company’s annual accounts must have regard to the directors’ duty under subsection (1).

*Individual accounts* 15**372 Duty to prepare individual accounts**

The directors of every company must prepare accounts for the company for each of its financial years.

Those accounts are referred to as the company’s “individual accounts”.

**373 Individual accounts: applicable accounting framework** 20

- (1) A company’s individual accounts may be prepared –
- (a) in accordance with section 374 (“Companies Act individual accounts”), or
  - (b) in accordance with international accounting standards (“IAS individual accounts”). 25
- This is subject to the following provisions of this section and to section 385 (consistency of financial reporting within group).
- (2) The individual accounts of a company that is a charity must be Companies Act individual accounts.
- (3) After the first financial year in which the directors of a company prepare IAS individual accounts (“the first IAS year”), all subsequent individual accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance. 30
- (4) There is a relevant change of circumstance if, at any time during or after the first IAS year – 35
- (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS individual accounts,
  - (b) the company ceases to be a company with securities admitted to trading on a regulated market in an EEA State, or

- (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market in an EEA State.
- (5) If, having changed to preparing Companies Act individual accounts following a relevant change of circumstance, the directors again prepare IAS individual accounts for the company, subsections (4) and (5) apply again as if the first financial year for which such accounts are again prepared were the first IAS year. 5

### 374 Companies Act individual accounts

- (1) Companies Act individual accounts must comprise –
  - (a) a balance sheet as at the last day of the financial year, and 10
  - (b) a profit and loss account.
- (2) The accounts must –
  - (a) in the case of the balance sheet, give a true and fair view of the state of affairs of the company as at the end of the financial year, and
  - (b) in the case of the profit and loss account, give a true and fair view of the profit or loss of the company for the financial year. 15
- (3) The accounts must comply with provision made by the Secretary of State by regulations as to –
  - (a) the form and content of the balance sheet and profit and loss account, and 20
  - (b) additional information to be provided by way of notes to the accounts.
- (4) If compliance with the regulations, and any other provision made by or under this Act as to the matters to be included in a company’s individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them. 25
- (5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view. 30  
Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

### 375 IAS individual accounts

Where the directors of a company prepare IAS individual accounts, they must state in the notes to the accounts that the accounts have been prepared in accordance with international accounting standards. 35

#### *Group accounts: small companies*

### 376 Option to prepare group accounts

If at the end of a financial year a company subject to the small companies regime is a parent company the directors, as well as preparing individual accounts for the year, may prepare consolidated accounts for the group for the year. 40

Those accounts are referred to in this Act as the company’s “group accounts”.

*Group accounts: other companies*

**377 Duty to prepare group accounts**

- (1) This section applies to companies that are not subject to the small companies regime. 5
- (2) If at the end of a financial year the company is a parent company the directors, as well as preparing individual accounts for the year, must prepare consolidated accounts for the group for the year unless the company is exempt from that requirement.
- (3) There are exemptions under- 10  
section 378 (company included in EEA accounts of larger group),  
section 379 (company included in non-EEA accounts of larger group), and  
section 380 (company none of whose subsidiary undertakings need be  
included in the consolidation).
- (4) A company to which this section applies but which is exempt from the 15  
requirement to prepare group accounts, may do so.
- (5) The accounts prepared under this section are referred to in this Act as the  
company’s “group accounts”.

**378 Exemption for company included in EEA group accounts of larger group**

- (1) A company is exempt from the requirement to prepare group accounts if it is 20  
itself a subsidiary undertaking and its immediate parent undertaking is  
established under the law of an EEA State, in the following cases –
  - (a) where the company is a wholly-owned subsidiary of that parent 25  
undertaking;
  - (b) where that parent undertaking holds more than 50% of the shares in the  
company and notice requesting the preparation of group accounts has  
not been served on the company by shareholders holding in  
aggregate –
    - (i) more than half of the remaining shares in the company, or 30
    - (ii) 5% of the total shares in the company.
 Such notice must be served not later than six months after the end of the  
financial year before that to which it relates.
- (2) Exemption is conditional upon compliance with all of the following 35  
conditions –
  - (a) the company must be included in consolidated accounts for a larger 35  
group drawn up to the same date, or to an earlier date in the same  
financial year, by a parent undertaking established under the law of an  
EEA State;
  - (b) those accounts must be drawn up and audited, and that parent 40  
undertaking’s annual report must be drawn up, according to that  
law –
    - (i) in accordance with the provisions of the Seventh Directive (83/  
349/EEC) (as modified, where relevant, by the provisions of the



- Bank Accounts Directive (86/635/EEC) or the Insurance Accounts Directive (91/674/EEC)), or
- (ii) in accordance with international accounting standards;
  - (c) the company must disclose in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts; 5
  - (d) the company must state in its individual accounts the name of the parent undertaking that draws up the group accounts referred to above and –
    - (i) if it is incorporated outside the United Kingdom, the country in which it is incorporated, or 10
    - (ii) if it is unincorporated, the address of its principal place of business;
  - (e) the company must deliver to the registrar, within the period for filing its accounts and reports for the financial year in question, copies of –
    - (i) those group accounts, and 15
    - (ii) the parent undertaking’s annual report, together with the auditor’s report on them;
  - (f) any requirement of Part 26 of this Act as to the delivery to the registrar of a certified translation into English must be met in relation to any document comprised in the accounts and reports delivered in accordance with paragraph (e). 20
- (3) For the purposes of subsection (1)(b) shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, shall be attributed to the parent undertaking. 25
- (4) The exemption does not apply to a company any of whose securities are admitted to trading on a regulated market in an EEA State.
- (5) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of this section whether the company is a wholly-owned subsidiary. 30
- (6) In subsection (4) “securities” includes –
- (a) shares and stock,
  - (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, 35
  - (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and
  - (d) certificates or other instruments that confer –
    - (i) property rights in respect of a security falling within paragraph (a), (b) or (c), 40
    - (ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or
    - (iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription. 45

### 379 Exemption for company included in non-EEA group accounts of larger group

- (1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its parent undertaking is not established under the law of an EEA State, in the following cases –
- (a) where the company is a wholly-owned subsidiary of that parent undertaking; 5
  - (b) where that parent undertaking holds more than 50% of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate – 10
    - (i) more than half of the remaining shares in the company, or
    - (ii) 5% of the total shares in the company.

Such notice must be served not later than six months after the end of the financial year before that to which it relates.
- (2) Exemption is conditional upon compliance with all of the following conditions – 15
- (a) the company and all of its subsidiary undertakings must be included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking;
  - (b) those accounts and, where appropriate, the group’s annual report, must be drawn up – 20
    - (i) in accordance with the provisions of the Seventh Directive (83/349/EEC) (as modified, where relevant, by the provisions of the Bank Accounts Directive (86/635/EEC) or the Insurance Accounts Directive (91/674/EEC)), or 25
    - (ii) in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up;
  - (c) the consolidated accounts must be audited by one or more persons authorised to audit accounts under the law under which the parent undertaking which draws them up is established; 30
  - (d) the company must disclose in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
  - (e) the company must state in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and – 35
    - (i) if it is incorporated outside the United Kingdom, the country in which it is incorporated, or
    - (ii) if it is unincorporated, the address of its principal place of business;
  - (f) the company must deliver to the registrar, within the period for filing its accounts and reports for the financial year in question, copies of – 40
    - (i) the group accounts, and
    - (ii) where appropriate, the consolidated annual report, together with the auditor’s report on them;
  - (g) any requirement of Part 26 of this Act as to the delivery to the registrar of a certified translation into English must be met in relation to any document comprised in the accounts and reports delivered in accordance with paragraph (f). 45
- (3) For the purposes of subsection (1)(b), shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent 50

undertaking or a wholly-owned subsidiary, are attributed to the parent undertaking.

- (4) The exemption does not apply to a company any of whose securities are admitted to trading on a regulated market in an EEA State.
- (5) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of this section whether the company is a wholly-owned subsidiary. 5
- (6) In subsection (4) “securities” includes –
- (a) shares and stock,
  - (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, 10
  - (c) warrants or other instruments entitling the holder to subscribe for securities falling within paragraph (a) or (b), and
  - (d) certificates or other instruments that confer – 15
    - (i) property rights in respect of a security falling within paragraph (a), (b) or (c),
    - (ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or 20
    - (iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

**380 Exemption if no subsidiary undertakings need be included in the consolidation** 25

A parent company is exempt from the requirement to prepare group accounts if under section 383 all of its subsidiary undertakings could be excluded from consolidation in Companies Act group accounts.

*Group accounts: general*

**381 Group accounts: applicable accounting framework** 30

- (1) The group accounts of certain parent companies are required by Article 4 of the IAS Regulation to be prepared in accordance with international accounting standards (“IAS group accounts”).
- (2) The group accounts of other companies may be prepared – 35
  - (a) in accordance with section 382 (“Companies Act group accounts”), or
  - (b) in accordance with international accounting standards (“IAS group accounts”).

This is subject to the following provisions of this section.

- (3) The group accounts of a parent company that is a charity must be Companies Act group accounts. 40
- (4) After the first financial year in which the directors of a parent company prepare IAS group accounts (“the first IAS year”), all subsequent group accounts of the company must be prepared in accordance with international accounting standards unless there is a relevant change of circumstance.

- (5) There is a relevant change of circumstance if, at any time during or after the first IAS year –
- (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IAS group accounts,
  - (b) the company ceases to be a company with securities admitted to trading on a regulated market in an EEA State, or
  - (c) a parent undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market in an EEA State.
- (6) If, having changed to preparing Companies Act group accounts following a relevant change of circumstance, the directors again prepare IAS group accounts for the company, subsections (4) and (5) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

### **382 Companies Act group accounts**

- (1) Companies Act group accounts must comprise –
- (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
  - (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.
- (2) The accounts must give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.
- (3) The accounts must comply with provision made by the Secretary of State by regulations as to –
- (a) the form and content of the consolidated balance sheet and consolidated profit and loss account, and
  - (b) additional information to be provided by way of notes to the accounts.
- (4) If compliance with the regulations, and any other provision made by or under this Act as to the matters to be included in a company’s group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.
- (5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.
- Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.

### **383 Companies Act group accounts: subsidiary undertakings included in the consolidation**

- (1) Where a parent company prepares Companies Act group accounts, all the subsidiary undertakings of the company must be included in the consolidation, subject to the following exceptions.

- (2) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view (but two or more undertakings may be excluded only if they are not material taken together).
- (3) A subsidiary undertaking may be excluded from consolidation where—
- (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or 5
  - (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or
  - (c) the interest of the parent company is held exclusively with a view to subsequent resale. 10
- (4) The reference in subsection (3)(a) to the rights of the parent company and the reference in subsection (3)(c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of the definition of “parent undertaking” (see section 771) in the absence of which it would not be the parent company. 15

#### **384 IAS group accounts**

Where the directors of a company prepare IAS group accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with international accounting standards. 20

#### **385 Consistency of financial reporting within group**

- (1) The directors of a parent company must secure that the individual accounts of—
- (a) the parent company, and
  - (b) each of its subsidiary undertakings, 25
- are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.
- (2) Subsection (1) does not apply if the directors do not prepare group accounts for the parent company.
- (3) Subsection (1) only applies to accounts of subsidiary undertakings that are required to be prepared under this Part. 30
- (4) Subsection (1) does not require accounts of undertakings that are charities to be prepared using the same financial reporting framework as accounts of undertakings which are not charities.
- (5) Subsection (1)(a) does not apply where the directors of a parent company prepare IAS group accounts and IAS individual accounts. 35

#### **386 Individual profit and loss account where group accounts prepared**

- (1) This section applies where—
- (a) a company prepares group accounts in accordance with this Act, and
  - (b) the notes to the company’s individual balance sheet show the company’s profit or loss for the financial year determined in accordance with this Act. 40

- (2) The profit and loss account need not contain the information specified in section 389 (information about employee numbers and costs)
- (3) The company's individual profit and loss account must be approved in accordance with section 392(1) (approval by directors) but may be omitted from the company's annual accounts for the purposes of the other provisions of the Companies Acts. 5
- (4) The exemption conferred by this section is conditional upon its being disclosed in the company's annual accounts that the exemption applies.

*Information to be given in notes to the accounts*

**387 Information about related undertakings** 10

- (1) The Secretary of State may make provision by regulations requiring information about related undertakings to be given in notes to a company's annual accounts.
- (2) The regulations –
  - (a) may make different provision according to whether or not the company prepares group accounts, and 15
  - (b) may specify the descriptions of undertaking in relation to which they apply, and make different provision in relation to different descriptions of related undertaking.
- (3) The regulations may provide that information need not be disclosed with respect to an undertaking that – 20
  - (a) is established under the law of a country outside the United Kingdom, or
  - (b) carries on business outside the United Kingdom, 25
 if in the opinion of the directors of the company the disclosure would be seriously prejudicial to the business of that undertaking, or to the business of the company or any of its subsidiary undertakings, and the Secretary of State agrees that the information need not be disclosed.
- (4) Where advantage is taken of any such exemption, that fact must be stated in a note to the company's annual accounts. 30

**388 Information about related undertakings: alternative compliance**

- (1) This section applies where the directors of a company are of the opinion that the number of undertakings in respect of which the company is required to disclose information under any provision of regulations under section 387 (related undertakings) is such that compliance with that provision would result in information of excessive length being given in notes to the company's annual accounts. 35
- (2) The information need only be given in respect of –
  - (a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company's annual accounts, and 40
  - (b) where the company prepares group accounts, undertakings excluded from consolidation.

- (3) If advantage is taken of subsection (2) –
- (a) there must be included in the notes to the company’s annual accounts a statement that the information is given only with respect to such undertakings as are mentioned in that subsection, and
  - (b) the full information (both that which is disclosed in the notes to the accounts and that which is not) must be annexed to the company’s next annual return. 5
- For this purpose the “next annual return” means that next delivered to the registrar after the accounts in question have been approved under section 392.
- (4) If a company fails to comply with subsection (3)(b), an offence is committed by – 10
- (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 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

### 389 Information about employee numbers and costs

- (1) In the case of a company not subject to the small companies regime, the following information with respect to the employees of the company must be given in notes to the company’s annual accounts – 20
- (a) the average number of persons employed by the company in the financial year, and
  - (b) the average number of persons so employed within each category of persons employed by the company. 25
- (2) The categories by reference to which the number required to be disclosed by subsection (1)(b) is to be determined must be such as the directors may select having regard to the manner in which the company’s activities are organised.
- (3) The average number required by subsection (1)(a) or (b) is determined by dividing the relevant annual number by the number of months in the financial year. 30
- (4) The relevant annual number is determined by ascertaining for each month in the financial year –
- (a) for the purposes of subsection (1)(a), the number of persons employed under contracts of service by the company in that month (whether throughout the month or not); 35
  - (b) for the purposes of subsection (1)(b), the number of persons in the category in question of persons so employed;
- and adding together all the monthly numbers.
- (5) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of subsection (1)(a) there must also be stated the aggregate amounts respectively of – 40
- (a) wages and salaries paid or payable in respect of that year to those persons; 45
  - (b) social security costs incurred by the company on their behalf; and
  - (c) other pension costs so incurred.

This does not apply in so far as those amounts, or any of them, are stated elsewhere in the company's accounts.

- (6) In subsection (5) –
- “pension costs” includes any costs incurred by the company in respect of –
    - (a) any pension scheme established for the purpose of providing pensions for persons currently or formerly employed by the company, 5
    - (b) any sums set aside for the future payment of pensions directly by the company to current or former employees, and 10
    - (c) any pensions paid directly to such persons without having first been set aside;
  - “social security costs” means any contributions by the company to any state social security or pension scheme, fund or arrangement.
- (7) Where the company prepares group accounts, this section applies as if the undertakings included in the consolidation were a single company. 15

### **390 Information about directors' benefits: remuneration**

- (1) The Secretary of State may make provision by regulations requiring information to be given in notes to a company's annual accounts about directors' remuneration. 20
- (2) The matters about which information may be required include –
- (a) gains made by directors on the exercise of share options;
  - (b) benefits received or receivable by directors under long-term incentive schemes;
  - (c) payments for loss of office (as defined in section 195); 25
  - (d) benefits receivable, and contributions for the purpose of providing benefits, in respect of past services of a person as director or in any other capacity while director;
  - (e) consideration paid to or receivable by third parties for making available the services of a person as director or in any other capacity while director. 30
- (3) Without prejudice to the generality of subsection (1), regulations under this section may make any such provision as was made immediately before the commencement of this Part by Part 1 of Schedule 6 to the Companies Act 1985 (c. 6). 35
- (4) For the purposes of this section, and regulations made under it, amounts paid to or receivable by –
- (a) a person connected with a director, or
  - (b) a body corporate controlled by a director,
- are treated as paid to or receivable by the director. 40
- The expressions “connected with” and “controlled by” in this subsection have the same meaning as in Part 10 (company directors).
- (5) It is the duty of –
- (a) any director of a company, and
  - (b) any person who is or has at any time in the preceding five years been a director of the company, 45



to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.

- (6) A person who makes default in complying with subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 5

### 391 Information about directors' benefits: advances, credit and guarantees

- (1) In the case of a company that does not prepare group accounts, details of—  
(a) advances and credits granted by the company to its directors, and  
(b) guarantees of any kind entered into by the company on behalf of its directors, 10  
must be shown in the notes to its individual accounts.
- (2) In the case of a parent company that prepares group accounts, details of—  
(a) advances and credits granted to the directors of the parent company, by that company or by any of its subsidiary undertakings, and  
(b) guarantees of any kind entered into on behalf of the directors of the parent company, by that company or by any of its subsidiary undertakings, 15  
must be shown in the notes to the group accounts.
- (3) The details required of an advance or credit are—  
(a) its amount, 20  
(b) an indication of the interest rate,  
(c) its main conditions, and  
(d) any amounts repaid.
- (4) The details required of a guarantee are—  
(a) its main terms, 25  
(b) the amount of the maximum liability that may be incurred by the company (or its subsidiary), and  
(c) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee (including any loss incurred by reason of enforcement of the guarantee). 30
- (5) There must also be stated in the notes to the accounts the totals—  
(a) of amounts stated under subsection (3)(a),  
(b) of amounts stated under subsection (3)(d),  
(c) of amounts stated under subsection (4)(b), and  
(d) of amounts stated under subsection (4)(c). 35
- (6) References in this section to the directors of a company are to the persons who were a director at any time in the financial year to which the accounts relate.
- (7) The requirements of this section apply in relation to every advance, credit or guarantee subsisting at any time in the financial year to which the accounts relate— 40  
(a) whenever it was entered into,  
(b) whether or not the person concerned was a director of the company in question at the time it was entered into, and

- (c) in the case of an advance, credit or guarantee involving a subsidiary undertaking of that company, whether or not that undertaking was such a subsidiary undertaking at the time it was entered into.
- (8) Banking companies and the holding companies of credit institutions need only state the details required by subsections (3)(a) and (4)(b). 5

*Approval and signing of accounts*

**392 Approval and signing of accounts**

- (1) A company’s annual accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.
- (2) The signature must be on the company’s balance sheet. 10
- (3) If the accounts are prepared in accordance with the provisions applicable to companies subject to the small companies regime, the balance sheet must contain a statement to that effect in a prominent position above the signature.
- (4) If annual accounts are approved that do not comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation), every director of the company who – 15
- (a) knew that they did not comply, or was reckless as to whether they complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the accounts from being approved, 20
- commits an offence.
- (5) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum. 25

**CHAPTER 5**

**DIRECTORS’ REPORT**

*Directors’ report*

- 393 Duty to prepare directors’ report** 30
- (1) The directors of a company must prepare a directors’ report for each financial year of the company.
- (2) In the case of a quoted company, the directors’ report need not contain any information included in the operating and financial review for that year (see sections 398 to 400). 35
- (3) For a financial year in which –
- (a) the company is a parent company, and
- (b) the directors of the company prepare group accounts,

the directors’ report must be a consolidated report (a “group directors’ report”) relating to the company and its subsidiary undertakings included in the consolidation.

- (4) A group directors’ report may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation, taken as a whole. 5
- (5) In the case of failure to comply with the requirement to prepare a directors’ report, an offence is committed by every person who –
- (a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and 10
  - (b) failed to take all reasonable steps for securing compliance with that requirement.
- (6) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum. 15

### **394 Contents of directors’ report: general**

- (1) The directors’ report for a financial year must state –
- (a) the names of the persons who, at any time during the financial year, were directors of the company, and 20
  - (b) the principal activities of the company in the course of the year.
- (2) In relation to a group directors’ report subsection (1)(b) has effect as if the reference to the company was to the company and its subsidiary undertakings included in the consolidation.
- (3) Except in the case of a company subject to the small companies regime, the report must state the amount (if any) that the directors recommend should be paid by way of dividend. 25
- (4) The Secretary of State may make provision by regulations as to other matters that must be disclosed in a directors’ report. 30  
Without prejudice to the generality of this power, the regulations may make any such provision as was formerly made by Schedule 7 to the Companies Act 1985.

### **395 Contents of directors’ report: business review**

- (1) This section applies to companies that are not subject to the small companies regime. 35
- (2) The directors’ report for a financial year must contain –
- (a) a fair review of the business of the company, and
  - (b) a description of the principal risks and uncertainties facing the company.
- (3) The review required is a balanced and comprehensive analysis of – 40
- (a) the development and performance of the business of the company during the financial year, and
  - (b) the position of the company at the end of that year,

consistent with the size and complexity of the business.

- (4) The review must, to the extent necessary for an understanding of the development, performance or position of the business of the company, include—
- (a) analysis using financial key performance indicators, and 5
  - (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.
- (5) The review must, where appropriate, include references to, and additional explanations of, amounts included in the company’s annual accounts. 10
- (6) In this section, “key performance indicators” means factors by reference to which the development, performance or position of the business of the company can be measured effectively.
- (7) Where a company qualifies as medium-sized in relation to a financial year (see sections 448 to 450), the directors’ report for the year need not comply with the requirements of subsection (4) above so far as they relate to non-financial information. 15
- (8) In relation to a group directors’ report this section has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation. 20

### **396 Contents of directors’ report: statement as to disclosure to auditors**

- (1) This section applies to a company unless—
- (a) it is exempt for the financial year in question from the requirements of Part 16 as to audit of accounts, and
  - (b) the directors take advantage of that exemption. 25
- (2) The directors’ report must contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved—
- (a) so far as the director is aware, there is no relevant audit information of which the company’s auditor is unaware, and
  - (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company’s auditor is aware of that information. 30
- (3) “Relevant audit information” means information needed by the company’s auditor in connection with preparing his report.
- (4) A director is regarded as having taken all the steps that he ought to have taken as a director in order to do the things mentioned in subsection (2)(b) if he has—
- (a) made such enquiries of his fellow directors and of the company’s auditors for that purpose, and
  - (b) taken such other steps (if any) for that purpose,
- as are required by his duty as a director of the company to exercise reasonable care, skill and diligence. 40
- (5) Where a directors’ report containing the statement required by this section is approved but the statement is false, every director of the company who—
- (a) knew that the statement was false, or was reckless as to whether it was false, and 45

- (b) failed to take reasonable steps to prevent the report from being approved,  
commits an offence.
- (6) A person guilty of an offence under subsection (5) 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); 10
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- 397 Approval and signing of directors’ report**
- (1) The directors’ report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company. 15
- (2) If the report is prepared in accordance with the small companies regime, it must contain a statement to that effect in a prominent position above the signature.
- (3) If a directors’ report is approved that does not comply with the requirements of this Act, every director of the company who – 20
- (a) knew that it did not comply, or was reckless as to whether it complied, and
  - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved, 25
- commits an offence.
- (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

## CHAPTER 6

### QUOTED COMPANIES: OPERATING AND FINANCIAL REVIEW

- 398 Duty to prepare operating and financial review**
- (1) The directors of a quoted company must prepare an operating and financial review for each financial year. 35
- (2) For a financial year in which –
- (a) the company is a parent company, and
  - (b) the directors of the company prepare group accounts,
- the operating and financial review must be a consolidated review (a “group operating and financial review”) relating to the company and its subsidiary undertakings included in the consolidation. 40

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- (3) A group operating and financial review may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation, taken as a whole.
- (4) In the case of failure to comply with the requirement to prepare an operating and financial review, an offence is committed by every person who – 5
- (a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and
  - (b) failed to take all reasonable steps for securing compliance with that requirement.
- (5) 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.
- 399 Objective and contents of operating and financial review**
- (1) The Secretary of State may make provision by regulations as to the objective and contents of an operating and financial review. 15
- Without prejudice to the generality of this power, the regulations may make any such provision as was made, immediately before the commencement of this Part, by Schedule 7ZA to the Companies Act 1985.
- (2) Nothing in the regulations requires the disclosure of information about impending developments or about matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company. 20
- 400 Approval and signing of operating and financial review**
- (1) The operating and financial review must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company. 25
- (2) If an operating and financial review is approved that does not comply with the requirements of this Act, every director of the company who –
- (a) knew that it did not comply, or was reckless as to whether it complied, and 30
  - (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the review from being approved,
- commits an offence.
- (3) A person guilty of an offence under this section is liable – 35
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

## CHAPTER 7

### QUOTED COMPANIES: DIRECTORS' REMUNERATION REPORT

#### 401 Duty to prepare directors' remuneration report

- (1) The directors of a quoted company must prepare a directors' remuneration report for each financial year of the company. 5
- (2) In the case of failure to comply with the requirement to prepare a directors' remuneration report, every person who –
  - (a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and
  - (b) failed to take all reasonable steps for securing compliance with that requirement, 10commits an offence.
- (3) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum. 15

#### 402 Contents of directors' remuneration report

- (1) The Secretary of State may make provision by regulations as to –
  - (a) the information that must be contained in a directors' remuneration report, 20
  - (b) how information is to be set out in the report, and
  - (c) what is to be the auditable part of the report.
- (2) Without prejudice to the generality of this power, the regulations may make any such provision as was made, immediately before the commencement of this Part, by Schedule 7A to the Companies Act 1985 (c. 6). 25
- (3) It is the duty of –
  - (a) any director of a company, and
  - (b) any person who is or has at any time in the preceding five years been a director of the company, 30to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.
- (4) A person who makes default in complying with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### 403 Approval and signing of directors' remuneration report 35

- (1) The directors' remuneration report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.
- (2) If a directors' remuneration report is approved that does not comply with the requirements of this Act, every director of the company who –
  - (a) knew that it did not comply, or was reckless as to whether it complied, and 40

- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,  
commits an offence.
- (3) A person guilty of an offence under this section is liable – 5
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

## CHAPTER 8

### PUBLICATION OF ACCOUNTS AND REPORTS 10

#### *Duty to circulate copies of accounts and reports*

#### **404 Duty to circulate copies of annual accounts and reports**

- (1) Every company must send a copy of its annual accounts and reports for each financial year to – 15
- (a) every member of the company,
- (b) every holder of the company's debentures, and
- (c) every person who is entitled to receive notice of general meetings.
- (2) Copies need not be sent to a person for whom the company does not have a current address.
- (3) A company has a "current address" for a person if – 20
- (a) an address has been notified to the company by the person as one at which documents may be sent to him, and
- (b) the company has no reason to believe that documents sent to him at that address will not reach him.
- (4) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company. 25
- (5) Where copies are sent out over a period of days, references in the Companies Acts to the day on which copies are sent out shall be read as references to the last day of that period. 30
- (6) This section has effect subject to section 407 (option to provide summary financial statement).

#### **405 Time allowed for sending out copies of accounts and reports**

- (1) The time allowed for sending out copies of the company's annual accounts and reports is as follows. 35
- (2) A private company must comply with section 404 not later than –
- (a) the end of the period for filing accounts and reports, or
- (b) if earlier, the date on which it actually delivers its accounts and reports to the registrar.



- (3) A public company must comply with section 404 not later than 21 days before the relevant accounts meeting.
- (4) If in the case of a public company copies are sent out later than is required by subsection (3), they shall, despite that, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the relevant accounts meeting. 5
- (5) Whether the time allowed is that for a private company or a public company is determined by reference to the company's status immediately before the end of the accounting reference period by reference to which the financial year for the accounts in question was determined. 10
- (6) In this section the “relevant accounts meeting” means the accounts meeting of the company at which the accounts and reports in question are to be laid.

#### **406 Default in sending out copies of accounts and reports: offences**

- (1) If default is made in complying with section 404 or 405, an offence is committed by – 15
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum. 20

#### *Option to provide summary financial statement*

#### **407 Option to provide summary financial statement**

- (1) A company may – 25
  - (a) in such cases as may be specified by regulations made by the Secretary of State, and
  - (b) provided any conditions so specified are complied with, provide a summary financial statement instead of copies of the accounts and reports required to be sent out by section 404.
- (2) Copies of those reports and accounts must, however, be sent to any person entitled to be sent them in accordance with that section and who wishes to receive them. 30
- (3) The Secretary of State may make provision by regulations as to the manner in which it is to be ascertained, whether before or after a person becomes entitled to be sent a copy of those accounts and reports, whether he wishes to receive them. 35
- (4) A summary financial statement must comply with the requirements of –
  - section 408 (form and contents of summary financial statement: unquoted companies), or
  - section 409 (form and contents of summary financial statement: quoted companies). 40
- (5) Regulations under this section are subject to negative resolution procedure.

#### **408 Form and contents of summary financial statement: unquoted companies**

- (1) A summary financial statement by a company that is not a quoted company must—
  - (a) be derived from the company’s annual accounts, and
  - (b) be prepared in accordance with this section and regulations made under it. 5
  
- (2) The summary financial statement must be in such form, and contain such information, as the Secretary of State may specify by regulations. The regulations may require the statement to include information derived from the directors’ report. 10
  
- (3) Nothing in this section or regulations made under it prevents a company from including in a summary financial statement additional information derived from the company’s annual accounts or the directors’ report.
  
- (4) The summary financial statement must—
  - (a) state that it is only a summary of information derived from the company’s annual accounts; 15
  - (b) state whether it contains additional information derived from the directors’ report and, if so, that it does not contain the full text of that report;
  - (c) state how a person entitled to them can obtain a full copy of the company’s annual accounts and the directors’ report; 20
  - (d) contain a statement by the company’s auditor of his opinion as to whether the summary financial statement—
    - (i) is consistent with the company’s annual accounts and, where information derived from the directors’ report is included in the statement, with that report, and 25
    - (ii) complies with the requirements of this section and regulations made under it;
  - (e) state whether the auditor’s report on the annual accounts was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification; 30
  - (f) state whether, in that report, the auditor’s statement under section 487 (whether directors’ report consistent with accounts) was qualified or unqualified and, if it was qualified, set out the qualified statement in full together with any further material needed to understand the qualification; 35
  - (g) state whether that auditor’s report contained a statement under—
    - (i) section 490(2)(a) or (b) (accounting records or returns inadequate or accounts not agreeing with records and returns), or 40
    - (ii) section 490(3) (failure to obtain necessary information and explanations),
 and if so, set out the statement in full.
  
- (5) Regulations under this section may provide that any specified material may, instead of being included in the summary financial statement, be sent separately at the same time as the statement. 45
  
- (6) Regulations under this section are subject to negative resolution procedure.

#### 409 Form and contents of summary financial statement: quoted companies

- (1) A summary financial statement by a quoted company must –
  - (a) be derived from the company’s annual accounts and the directors’ remuneration report, and
  - (b) be prepared in accordance with this section and regulations made under it. 5
- (2) The summary financial statement must be in such form, and contain such information, as the Secretary of State may specify by regulations. The regulations may require the statement to include information derived from the directors’ report and operating and financial review. 10
- (3) Nothing in this section or regulations made under it prevents a company from including in a summary financial statement additional information derived from the company’s annual accounts, the directors’ remuneration report, the directors’ report or the operating and financial review.
- (4) The summary financial statement must – 15
  - (a) state that it is only a summary of information derived from the company’s annual accounts and the directors’ remuneration report;
  - (b) state whether it contains additional information derived from the directors’ report or the operating and financial review and, if so, that it does not contain the full text of that report or review; 20
  - (c) state how a person entitled to them can obtain a full copy of the company’s annual accounts, the directors’ remuneration report, the directors’ report and the operating and financial review;
  - (d) contain a statement by the company’s auditor of his opinion as to whether the summary financial statement – 25
    - (i) is consistent with the company’s annual accounts and the directors’ remuneration report and, where information derived from the directors’ report or the operating and financial review is included in the statement, with that report or review, and 30
    - (ii) complies with the requirements of this section and regulations made under it;
  - (e) state whether the auditor’s report on the annual accounts and the auditable part of the directors’ remuneration report was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification; 35
  - (f) state whether that auditor’s report contained a statement under –
    - (i) section 490(2) (accounting records or returns inadequate or accounts or directors’ remuneration report not agreeing with records and returns), or 40
    - (ii) section 490(3) (failure to obtain necessary information and explanations),and if so, set out the statement in full;
  - (g) state whether, in that report, the auditor’s statement under –
    - (i) section 487 (whether directors’ report consistent with accounts), or 45
    - (ii) section 488 (whether operating and financial review consistent with accounts),

was qualified or unqualified and, if it was qualified, set out the qualified statement in full together with any further material needed to understand the qualification.

- (5) Regulations under this section may provide that any specified material may, instead of being included in the summary financial statement, be sent separately at the same time as the statement. 5
- (6) Regulations under this section are subject to negative resolution procedure.

#### 410 Summary financial statements: offences

- (1) If default is made in complying with any provision of section 407, 408 or 409, or of regulations under any of those sections, an offence is committed by – 10
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Quoted companies: requirements as to website publication* 15

#### 411 Quoted companies: annual accounts and reports to be made available on website

- (1) A quoted company must ensure that its annual accounts and reports –
  - (a) are made available on a website, and
  - (b) remain so available until the annual accounts and reports for the company's next financial year are made available in accordance with this section. 20
- (2) The provisions of section 413 (requirements as to website availability) apply.
- (3) In the event of default in complying with this section (or with the requirements of section 413 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default. 25
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### 412 Quoted companies: preliminary statement of results to be made available on website 30

- (1) This section applies where a quoted company prepares a preliminary statement of its annual results in accordance with the requirements of listing rules or comparable requirements of the market on which the company's equity share capital is admitted to trading.
- (2) The company must ensure that the statement – 35
  - (a) is made available on a website, and
  - (b) remains so available until the annual accounts and reports for the financial year are made available in accordance with section 411.
- (3) The provisions of section 413 (requirements as to website availability) apply.

- (4) A preliminary statement of the company’s annual results means information published before publication of the company’s annual accounts and reports that is or purports to be –
- (a) a balance sheet as at the end of the financial year, or
  - (b) a profit and loss account for the financial year, whether on an individual or a consolidated basis.
- (5) In the event of default in complying with this section (or with the requirements of section 413 as it applies for the purposes of this section), an offence is committed by every officer of the company who is in default.
- (6) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **413 Requirements as to website availability**

- (1) The following provisions apply for the purposes of –
- section 411 (quoted companies: annual accounts and reports to be made available on website), and
  - section 412 (quoted companies: preliminary results to be made available on website).
- (2) The information must be made available on a website that –
- (a) is maintained by or on behalf of the company, and
  - (b) identifies the company in question.
- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted.
- (4) The information –
- (a) must be made available as soon as reasonably practicable, and
  - (b) must be kept available throughout the period specified in the section in question.
- (5) A failure to make information available on a website throughout the period referred to in subsection (4)(b) is disregarded if –
- (a) the information is made available on the website for part of that period, and
  - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

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

#### **414 Right of member or debenture holder to copies of accounts and reports: unquoted companies**

- (1) A member of, or holder of debentures of, an unquoted company is entitled to be provided, on demand and without charge, with a copy of –
- (a) the company’s last annual accounts,
  - (b) the last directors’ report, and
  - (c) the auditor’s report on those accounts (including the statement on that report).

- (2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 404.
- (3) If a demand made under this section is not complied with within seven days of receipt by the company, an offence is committed by – 5
- (a) the company, and
- (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 10

**415 Right of member or debenture holder to copies of accounts and reports: quoted companies**

- (1) A member of, or holder of debentures of, a quoted company is entitled to be provided, on demand and without charge, with a copy of – 15
- (a) the company’s last annual accounts,
- (b) the last directors’ remuneration report,
- (c) the last directors’ report,
- (d) the last operating and financial review, and
- (e) the auditor’s report on those accounts (including the report on the directors’ remuneration report and the statements on the directors’ report and operating and financial review). 20
- (2) The entitlement under this section is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under section 404. 25
- (3) If a demand made under this section is not complied with within seven days of receipt by the company, an offence is committed by –
- (a) the company, and
- (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 30

*Requirements in connection with publication of accounts and reports*

**416 Name of signatory to be stated in published copies of accounts and reports** 35

- (1) Every copy of a document to which this section applies that is published by or on behalf of the company must state the name of the person who signed it on behalf of the board.
- (2) In the case of an unquoted company, this section applies to copies of – 40
- (a) the company’s balance sheet, and
- (b) the directors’ report.
- (3) In the case of a quoted company, this section applies to copies of –
- (a) the company’s balance sheet,

- (b) the directors’ remuneration report,
    - (c) the directors’ report, and
    - (d) the operating and financial review.
  - (4) If a copy is published without the required statement of the signatory’s name, an offence is committed by – 5
    - (a) the company, and
    - (b) every officer of the company who is in default.
  - (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 417 Requirements in connection with publication of statutory accounts** 10
- (1) If a company publishes any of its statutory accounts, they must be accompanied by –
    - (a) the auditor’s report on those accounts (unless the company is exempt from audit and the directors have taken advantage of that exemption), or 15
    - (b) where the company is exempt from audit by virtue of section 464 (charity: accountant’s report in lieu of audit) and the directors take advantage of that exemption, the report made for the purposes of that section.
  - (2) A company that prepares statutory group accounts for a financial year must not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts. 20
  - (3) A company’s “statutory accounts” are its accounts for a financial year as required to be delivered to the registrar under section 424.
  - (4) If a company contravenes any provision of this section, an offence is committed by – 25
    - (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. 30
  - (6) This section does not apply in relation to the provision by a company of a summary financial statement (see section 407).
- 418 Requirements in connection with publication of non-statutory accounts**
- (1) If a company publishes non-statutory accounts, it must publish with them a statement indicating – 35
    - (a) that they are not the company’s statutory accounts,
    - (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the registrar,
    - (c) whether an auditor’s report has been made on the company’s statutory accounts for any such financial year, and if so whether the report – 40
      - (i) was qualified or unqualified, or included a reference to any matters to which the auditor drew attention by way of emphasis without qualifying the report, or

- 
- (ii) contained a statement under section 490(2) (accounting records or returns inadequate or accounts or directors' remuneration report not agreeing with records and returns), or section 490(3) (failure to obtain necessary information and explanations); and
- (d) whether any report has been made on the company's statutory accounts for any such financial year for the purposes of section 464 (small charities: accountant's report in lieu of audit), and if so whether that report was qualified. 5
- (2) The company must not publish with non-statutory accounts – 10
- (a) the auditor's report on the company's statutory accounts, or
- (b) where the company is exempt from audit under section 464, any report made for the purposes of that section.
- (3) References in this section to the publication by a company of "non-statutory accounts" are to the publication of – 15
- (a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company, or
- (b) an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company, 20
- otherwise than as part of the company's statutory accounts.
- (4) If a company contravenes any provision of this section, an offence is committed by – 25
- (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.
- (6) This section does not apply in relation to the provision by a company of a summary financial statement (see section 407).
- 419 Meaning of "publication" in relation to accounts and reports** 30
- (1) This section has effect for the purposes of – 35
- section 416 (name of signatory to be stated in published copies of accounts and reports),
- section 417 (requirements in connection with publication of statutory accounts), and
- section 418 (requirements in connection with publication of non-statutory accounts).
- (2) For the purposes of those sections a company is regarded as publishing a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it. 40



## CHAPTER 9

### PUBLIC COMPANIES: LAYING OF ACCOUNTS AND REPORTS BEFORE GENERAL MEETING

#### **420 Public companies: laying of accounts and reports before general meeting**

- (1) The directors of a public company must lay before the company in general meeting copies of its annual accounts and reports. 5
- (2) This section must be complied with not later than the end of the period for filing the accounts and reports in question.
- (3) In the Companies Acts “accounts meeting”, in relation to a public company, means a general meeting of the company at which the company’s annual accounts and reports are (or are to be) laid in accordance with this section. 10

#### **421 Public companies: offence of failure to lay accounts and reports**

- (1) If the requirements of section 420 (public companies: laying of accounts and reports before general meeting) are not complied with before the end of the period allowed, every person who immediately before the end of that period was a director of the company commits an offence. 15
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.
- (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part. 20
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

## CHAPTER 10

25

### QUOTED COMPANIES: MEMBERS’ APPROVAL OF DIRECTORS’ REMUNERATION REPORT

#### **422 Quoted companies: members’ approval of directors’ remuneration report**

- (1) A quoted company must, prior to the accounts meeting, give to the members of the company entitled to be sent notice of the meeting notice of the intention to move at the meeting, as an ordinary resolution, a resolution approving the directors’ remuneration report for the financial year. 30
- (2) The notice may be given in any manner permitted for the service on the member of notice of the meeting.
- (3) The business that may be dealt with at the accounts meeting includes the resolution. 35  
This is so notwithstanding any default in complying with subsection (1) or (2).
- (4) The existing directors must ensure that the resolution is put to the vote of the meeting.

- (5) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this section.
- (6) In this section –
- “the accounts meeting” means the general meeting of the company before which the company’s annual accounts for the financial year are to be laid; and
  - “existing director” means a person who is a director of the company immediately before that meeting.

#### **423 Quoted companies: offences in connection with procedure for approval**

- (1) In the event of default in complying with section 422(1) (notice to be given of resolution for approval of directors' remuneration report), an offence is committed by every officer of the company who is in default. 10
- (2) If the resolution is not put to the vote of the accounts meeting, an offence is committed by each existing director.
- (3) It is a defence for a person charged with an offence under subsection (2) to prove that he took all reasonable steps for securing that the resolution was put to the vote of the meeting. 15
- (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.
- (5) In this section – 20
- “the accounts meeting” means the general meeting of the company before which the company’s annual accounts for the financial year are to be laid; and
  - “existing director” means a person who is a director of the company immediately before that meeting. 25

### **CHAPTER 11**

#### **FILING OF ACCOUNTS AND REPORTS**

##### *Duty to file accounts and reports*

#### **424 Duty to file accounts and reports with the registrar**

- (1) The directors of a company must deliver to the registrar for each financial year the accounts and reports required by – 30
- section 427 (filing obligations of companies subject to small companies regime),
  - section 428 (filing obligations of medium-sized companies),
  - section 429 (filing obligations of unquoted companies), or 35
  - section 430 (filing obligations of quoted companies).
- (2) This is subject to section 431 (unlimited companies exempt from filing obligations).

#### **425 Period allowed for filing accounts**

- (1) This section specifies the period allowed for the directors of a company to comply with their obligation under section 424 to deliver accounts and reports for a financial year to the registrar.  
This is referred to in the Companies Acts as the “period for filing” those accounts and reports. 5
- (2) The period is –
  - (a) for a private company, nine months after the end of the relevant accounting reference period, and
  - (b) for a public company, six months after the end of that period. 10This is subject to the following provisions of this section.
- (3) If the relevant accounting reference period is the company’s first and is a period of more than twelve months, the period is –
  - (a) nine months or six months, as the case may be, from the first anniversary of the incorporation of the company, or 15
  - (b) three months after the end of the accounting reference period, whichever last expires.
- (4) If the relevant accounting reference period is treated as shortened by virtue of a notice given by the company under section 370 (alteration of accounting reference date), the period is – 20
  - (a) that applicable in accordance with the above provisions, or
  - (b) three months from the date of the notice under that section, whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice. 25
- (6) Whether the period allowed is that for a private company or a public company is determined by reference to the company’s status immediately before the end of the relevant accounting reference period. 30
- (7) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.

#### **426 Calculation of period allowed**

- (1) This section applies for the purposes of calculating the period for filing a company’s accounts and reports which is expressed as a specified number of months from a specified date or after the end of a specified previous period. 35
- (2) Subject to the following provisions, the period ends with the date in the appropriate month corresponding to the specified date or the last day of the specified previous period. 40
- (3) If the specified date, or the last day of the specified previous period, is the last day of a month, the period ends with the last day of the appropriate month (whether or not that is the corresponding date).
- (4) If –

- (a) the specified date, or the last day of the specified previous period, is not the last day of a month but is the 29th or 30th, and
  - (b) the appropriate month is February, the period ends with the last day of February.
- (5) “The appropriate month” means the month that is the specified number of months after the month in which the specified date, or the end of the specified previous period, falls. 5

*Filing obligations of different descriptions of company*

**427 Filing obligations of companies subject to small companies regime**

- (1) The directors of a company subject to the small companies regime – 10
  - (a) must deliver to the registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year, and
  - (b) may also deliver to the registrar –
    - (i) a copy of the company’s profit and loss account for that year, and 15
    - (ii) a copy of the directors’ report for that year.
- (2) The directors must also deliver to the registrar a copy of the auditor’s report on those accounts (and on the directors’ report).
- (3) Subsection (2) does not apply if the company is exempt from audit and the directors have taken advantage of that exemption. 20  
 If the company is exempt from audit by virtue of section 464 (small charities: accountant’s report in lieu of audit), a copy of the accountant’s report for the purposes of that section must be delivered instead.
- (4) The copies of accounts and reports delivered to the registrar must be copies of the company’s annual accounts and reports, except that where the company prepares Companies Act accounts – 25
  - (a) the directors may deliver to the registrar a copy of a balance sheet drawn up in accordance with regulations made by the Secretary of State, and
  - (b) there may be omitted from the copy profit and loss account delivered to the registrar such items as may be specified by the regulations. 30
 These are referred to in this Part as “abbreviated accounts”.
- (5) If abbreviated accounts are delivered to the registrar the obligation to deliver a copy of the auditor’s report on the accounts is to deliver a copy of the special auditor’s report required by section 432. 35
- (6) Where the directors of a company subject to the small companies regime deliver to the registrar IAS accounts, or Companies Act accounts that are not abbreviated accounts, and in accordance with this section –
  - (a) do not deliver to the registrar a copy of the company’s profit and loss account, or 40
  - (b) do not deliver to the registrar a copy of the directors’ report, the copy of the balance sheet delivered to the registrar must contain in a prominent position a statement that the company’s annual accounts and reports have been delivered in accordance with the provisions applicable to companies subject to the small companies regime. 45

- (7) The copies of the balance sheet and any directors' report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.

#### **428 Filing obligations of medium-sized companies**

- (1) The directors of a company that qualifies as a medium-sized company in relation to a financial year (see sections 448 to 450) must deliver to the registrar a copy of – 5
- (a) the company's annual accounts, and
  - (b) the directors' report.
- (2) They must also deliver to the registrar a copy of the auditor's report on those accounts (and on the directors' report). 10  
This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) Where the company prepares Companies Act accounts, the directors may deliver to the registrar a copy of the company's annual accounts for the financial year – 15
- (a) that includes a profit and loss account in which items are combined in accordance with regulations made by the Secretary of State, and
  - (b) that does not contain items whose omission is authorised by the regulations. 20
- These are referred to in this Part as "abbreviated accounts".
- (4) If abbreviated accounts are delivered to the registrar the obligation to deliver a copy of the auditor's report on the accounts is to deliver a copy of the special auditor's report required by section 432.
- (5) The copies of the balance sheet and directors' report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board. 25

#### **429 Filing obligations of unquoted companies**

- (1) The directors of an unquoted company must deliver to the registrar for each financial year of the company a copy of – 30
- (a) the company's annual accounts, and
  - (b) the directors' report.
- (2) The directors must also deliver to the registrar a copy of the auditor's report on those accounts (and the directors' report). 35  
This does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.
- (3) The copies of the balance sheet and directors' report delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.
- (4) This section does not apply to companies within – 40
- (a) section 427 (filing obligations of companies subject to the small companies regime), or
  - (b) section 428 (filing obligations of medium-sized companies).

#### **430 Filing obligations of quoted companies**

- (1) The directors of a quoted company must deliver to the registrar for each financial year of the company a copy of –
  - (a) the company’s annual accounts,
  - (b) the directors’ remuneration report, 5
  - (c) the directors’ report, and
  - (d) the operating and financial review.
- (2) They must also deliver a copy of the auditor’s report on those accounts (and on the directors’ remuneration report, the directors’ report and the operating and financial review). 10
- (3) The copies of the balance sheet, the directors’ remuneration report, the directors’ report and the operating and financial review delivered to the registrar under this section must state the name of the person who signed it on behalf of the board.

#### **431 Unlimited companies exempt from obligation to file accounts** 15

- (1) The directors of an unlimited company are not required to deliver accounts and reports to the registrar in respect of a financial year if the following conditions are met.
- (2) The conditions are that at no time during the relevant accounting reference period –
  - (a) has the company been, to its knowledge, a subsidiary undertaking of an undertaking which was then limited, or
  - (b) have there been, to its knowledge, exercisable by or on behalf of two or more undertakings which were then limited, rights which if exercisable by one of them would have made the company a subsidiary undertaking of it, or 25
  - (c) has the company been a parent company of an undertaking which was then limited.

The references above to an undertaking being limited at a particular time are to an undertaking (under whatever law established) the liability of whose members is at that time limited. 30

- (3) The exemption conferred by this section does not apply if –
  - (a) the company is a banking or insurance company or the parent company of a banking or insurance group, or
  - (b) the company is a qualifying company within the meaning of the Partnerships and Unlimited Companies (Accounts) Regulations 1993 (S.I. 1993/1820). 35
- (4) Where a company is exempt by virtue of this section from the obligation to deliver accounts –
  - (a) section 417(3) (requirements in connection with publication of statutory accounts: meaning of “statutory accounts”) has effect with the substitution for the words “as required to be delivered to the registrar under section 424” of the words “as prepared in accordance with this Part and approved by the board of directors”; and 40
  - (b) section 418(1)(b) (requirements in connection with publication of non-statutory accounts: statement whether statutory accounts delivered) has effect with the substitution for the words from “whether statutory 45

accounts” to “have been delivered to the registrar” of the words “that the company is exempt from the requirement to deliver statutory accounts”.

- (5) In this section the “relevant accounting reference period”, in relation to a financial year, means the accounting reference period by reference to which that financial year was determined. 5

*Requirements where abbreviated accounts delivered*

**432 Special auditor’s report where abbreviated accounts delivered**

- (1) This section applies where –  
(a) the directors of a company deliver abbreviated accounts to the registrar, and 10  
(b) the company is not exempt from audit (or the directors have not taken advantage of any such exemption).
- (2) The directors must also deliver to the registrar a copy of a special report of the company’s auditor stating that in his opinion – 15  
(a) the company is entitled to deliver abbreviated accounts in accordance with the section in question, and  
(b) the abbreviated accounts to be delivered are properly prepared in accordance with regulations under that section.
- (3) The auditor’s report on the company’s annual accounts need not be delivered, but – 20  
(a) if that report was qualified, the special report must set out that report in full together with any further material necessary to understand the qualification, and  
(b) if that report contained a statement under – 25  
(i) section 490(2)(a) or (b) (accounts, records or returns inadequate or accounts not agreeing with records and returns), or  
(ii) section 490(3) (failure to obtain necessary information and explanations),  
the special report must set out that statement in full. 30
- (4) The provisions of –  
sections 495 to 497 (signature of auditor’s report), and  
sections 498 to 500 (offences in connection with auditor’s report),  
apply to a special report under this section as they apply to an auditor’s report on the company’s annual accounts prepared under Part 16. 35
- (5) If abbreviated accounts are delivered to the registrar, the references in section 417 or 418 (requirements in connection with publication of accounts) to the auditor’s report on the company’s annual accounts shall be read as references to the special auditor’s report required by this section.

**433 Approval and signing of abbreviated accounts** 40

- (1) Abbreviated accounts must be approved by the board of directors and signed on behalf of the board by a director of the company.
- (2) The signature must be on the balance sheet.

- (3) The balance sheet must contain in a prominent position above the signature a statement to the effect that it is prepared in accordance with the special provisions of this Act relating (as the case may be) to companies subject to the small companies regime or to medium-sized companies.
- (4) If abbreviated accounts are approved that do not comply with the requirements of regulations under the relevant section, every director of the company who –
- (a) knew that they did not comply, or was reckless as to whether they complied, and
  - (b) failed to take reasonable steps to prevent them from being approved, commits an offence. 10
- (5) A person guilty of an offence under subsection (4) is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum. 15

*Failure to file accounts and reports*

**434 Default in filing accounts and reports: offences**

- (1) If the requirements of section 424 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, every person who immediately before the end of that period was a director of the company commits an offence. 20
- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period. 25
- (3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 30

**435 Default in filing accounts and reports: court order**

- (1) If –
- (a) the requirements of section 424 (duty to file accounts and reports) are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, and
  - (b) the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance,
- the court may, on the application of any member or creditor of the company or of the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order. 40
- (2) The court's order may provide that all costs (in Scotland, expenses) of and incidental to the application are to be borne by the directors.



### 436 Civil penalty for failure to file accounts and reports

- (1) Where the requirements of section 424 are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company is liable to a civil penalty. 5  
This is in addition to any liability of the directors under section 434.
- (2) The amount of the penalty shall be determined in accordance with regulations made by the Secretary of State by reference to –
  - (a) the length of the period between the end of the period for filing the accounts and reports in question and the day on which the requirements are complied with, and 10
  - (b) whether the company is a private or public company.
- (3) The penalty may be recovered by the registrar and is to be paid into the Consolidated Fund.
- (4) It is not a defence in proceedings under this section to prove that the documents in question were not in fact prepared as required by this Part. 15
- (5) Regulations under this section having the effect of increasing the penalty payable in any case are subject to affirmative resolution procedure. Otherwise, the regulations are subject to negative resolution procedure.

## CHAPTER 12 20

### REVISION OF DEFECTIVE ACCOUNTS AND REPORTS

#### *Voluntary revision*

### 437 Voluntary revision of accounts etc

- (1) If it appears to the directors of a company that –
  - (a) the company's annual accounts, 25
  - (b) the directors' remuneration report, the directors' report or the operating and financial review, or
  - (c) a summary financial statement of the company,did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), they may prepare revised accounts or a revised report, review or statement. 30
- (2) Where copies of the previous accounts, report or review have been sent out to members, delivered to the registrar or (in the case of a public company) laid before the company in general meeting, the revisions must be confined to –
  - (a) the correction of those respects in which the previous accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and 35
  - (b) the making of any necessary consequential alterations.
- (3) The Secretary of State may make provision by regulations as to the application of the provisions of this Act in relation to – 40
  - (a) revised annual accounts,

- (b) a revised directors' remuneration report, directors' report or operating and financial review, or
  - (c) a revised summary financial statement.
- (4) The regulations may, in particular –
- (a) make different provision according to whether the previous accounts, report, review or statement are replaced or are supplemented by a document indicating the corrections to be made; 5
  - (b) make provision with respect to the functions of the company's auditor or reporting accountant in relation to the revised accounts, report, review or statement; 10
  - (c) require the directors to take such steps as may be specified in the regulations where the previous accounts, report or review have been –
    - (i) sent out to members and others under section 404,
    - (ii) laid before the company in general meeting, or
    - (iii) delivered to the registrar, 15
 or where a summary financial statement containing information derived from the previous accounts, report or review has been sent to members under section 407;
  - (d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations. 20
- (5) Regulations under this section are subject to negative resolution procedure.

*Secretary of State's notice*

**438 Secretary of State's notice in respect of accounts or reports**

- (1) This section applies where – 25
- (a) copies of a company's annual accounts, directors' report or operating and financial review have been sent out under section 404, or
  - (b) a copy of a company's annual accounts, directors' report or operating and financial review has been delivered to the registrar or (in the case of a public company) laid before the company in general meeting, 30
- and it appears to the Secretary of State that there is, or may be, a question whether the accounts, report or review comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).
- (2) The Secretary of State may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise. 35
- (3) The notice must specify a period of not less than one month for the directors to give an explanation of the accounts, report or review or prepare revised accounts or a revised report or review.
- (4) If at the end of the specified period, or such longer period as the Secretary of State may allow, it appears to the Secretary of State that the directors have not – 40
- (a) given a satisfactory explanation of the accounts, report or review, or
  - (b) revised the accounts, report or review so as to comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), 45

the Secretary of State may apply to the court.

- (5) The provisions of this section apply equally to revised annual accounts, revised directors' reports and revised operating and financial reviews, in which case they have effect as if the references to revised accounts, reports or reviews were references to further revised accounts, reports or reviews.

5

*Application to court*

**439 Application to court in respect of defective accounts or reports**

- (1) An application may be made to the court –
- (a) by the Secretary of State, after having complied with section 438, or
  - (b) by a person authorised by the Secretary of State for the purposes of this section,
- for a declaration (in Scotland, a declarator) that the annual accounts of a company do not comply, or a directors' report or operating and financial review does not comply, with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) and for an order requiring the directors of the company to prepare revised accounts or a revised report or review.
- (2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.
- (3) If the court orders the preparation of revised accounts, it may give directions as to –
- (a) the auditing of the accounts,
  - (b) the revision of any directors' remuneration report, directors' report or summary financial statement, and
  - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts,
- and such other matters as the court thinks fit.
- (4) If the court orders the preparation of a revised directors' report or a revised operating and financial review it may give directions as to –
- (a) the review of the directors' report or operating and financial review by the auditors,
  - (b) the revision of any directors' report, directors' remuneration report, operating and financial review or summary financial statement,
  - (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous report or review, and
  - (d) such other matters as the court thinks fit.
- (5) If the court finds that the accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) it may order that all or part of –
- (a) the costs (in Scotland, expenses) of and incidental to the application, and
  - (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts or a revised report or review,

are to be borne by such of the directors as were party to the approval of the defective accounts, report or review.

For this purpose every director of the company at the time of the approval of the accounts, report or review shall be taken to have been a party to the approval unless he shows that he took all reasonable steps to prevent that approval.

- (6) Where the court makes an order under subsection (5) it shall have regard to whether the directors party to the approval of the defective accounts, report or review knew or ought to have known that the accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and it may exclude one or more directors from the order or order the payment of different amounts by different directors. 10
- (7) On the conclusion of proceedings on an application under this section, the applicant must send to the registrar for registration a copy of the court order or, as the case may be, give notice to the registrar that the application has failed or been withdrawn. 15
- (8) The provisions of this section apply equally to revised annual accounts, revised directors' reports and revised operating and financial reviews, in which case they have effect as if the references to revised accounts, reports or reviews were references to further revised accounts, reports or reviews. 20

#### **440 Other persons authorised to apply to the court**

- (1) The Secretary of State may by order (an "authorisation order") authorise for the purposes of section 439 any person appearing to him –
- (a) to have an interest in, and to have satisfactory procedures directed to securing, compliance by companies with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) relating to accounts, directors' reports and operating and financial reviews, 25
  - (b) to have satisfactory procedures for receiving and investigating complaints about companies' annual accounts, directors' reports and operating and financial reviews, and 30
  - (c) otherwise to be a fit and proper person to be authorised.
- (2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.
- (3) The Secretary of State may refuse to authorise a person if he considers that his authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised. 35
- (4) If the authorised person is an unincorporated association, proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person may be brought by or against the association in the name of a body corporate whose constitution provides for the establishment of the association. 40
- (5) An authorisation order may contain such requirements or other provisions relating to the exercise of functions by the authorised person as appear to the Secretary of State to be appropriate. 45
- No such order is to be made unless it appears to the Secretary of State that the person would, if authorised, exercise his functions as an authorised person in accordance with the provisions proposed.

- (6) Where authorisation is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.
- (7) An order under this section is subject to negative resolution procedure.

#### 441 Disclosure of information by tax authorities

- (1) The Commissioners for Her Majesty's Revenue and Customs may disclose information to a person authorised under section 440 for the purpose of facilitating –
  - (a) the taking of steps by that person to discover whether there are grounds for an application to the court under section 439 (application in respect of defective accounts etc), or 10
  - (b) a decision by the authorised person whether to make such an application.
- (2) This section applies despite any statutory or other restriction on the disclosure of information.  
Provided that, in the case of personal data within the meaning of the Data Protection Act 1998 (c. 29), information is not to be disclosed in contravention of that Act. 15
- (3) Information disclosed to an authorised person under this section –
  - (a) may not be used except in or in connection with –
    - (i) taking steps to discover whether there are grounds for an application to the court under section 439, or 20
    - (ii) deciding whether or not to make such an application, or in, or in connection with, proceedings on such an application; and
  - (b) must not be further disclosed except –
    - (i) to the person to whom the information relates, or 25
    - (ii) in, or in connection with, proceedings on any such application to the court.
- (4) A person who contravenes subsection (3) commits an offence unless –
  - (a) he did not know, and had no reason to suspect, that the information had been disclosed under this section, or 30
  - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) A person guilty of an offence under subsection (4) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both); 35
  - (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 three months, or to a fine not exceeding the statutory maximum (or both). 40

*Power of authorised person to require documents etc*

**442 Power of authorised person to require documents, information and explanations**

- (1) This section applies where it appears to a person who is authorised under section 440 that there is, or may be, a question whether a company’s annual accounts, directors’ report or operating and financial review comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation). 5
- (2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of – 10
  - (a) discovering whether there are grounds for an application to the court under section 439, or
  - (b) deciding whether to make such an application.
- (3) Those persons are – 15
  - (a) the company;
  - (b) any officer, employee, or auditor of the company;
  - (c) any persons who fell within paragraph (b) at a time to which the document or information required by the authorised person relates.
- (4) If a person fails to comply with such a requirement, the authorised person may apply to the court. 20
- (5) If it appears to the court that the person has failed to comply with a requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided. 25
- (6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.
- (7) Nothing in this section compels any person to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings. 30
- (8) In this section “document” includes information recorded in any form.

**443 Restrictions on disclosure of information obtained under compulsory powers**

- (1) This section applies to information (in whatever form) obtained in pursuance of a requirement or order under section 442 (power of authorised person to require documents etc) that relates to the private affairs of an individual or to any particular business. 35
- (2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business. 40
- (3) This does not apply –
  - (a) to disclosure permitted by section 444 (permitted disclosure of information obtained under compulsory powers), or

- (b) to the disclosure of information that is or has been available to the public from another source.
- (4) A person who discloses information in contravention of this section commits an offence, unless –
  - (a) he did not know, and had no reason to suspect, that the information had been disclosed under section 442, or 5
  - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both); 10
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 15
    - (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).

#### **444 Permitted disclosure of information obtained under compulsory powers**

- (1) The prohibition in section 443 of the disclosure of information obtained in pursuance of a requirement or order under section 442 (power of authorised person to require documents etc) that relates to the private affairs of an individual or to any particular business has effect subject to the following exceptions. 20
- (2) It does not apply to the disclosure of information for the purpose of facilitating the carrying out by the authorised person of his functions under section 439. 25
- (3) It does not apply to disclosure to –
  - (a) the Secretary of State,
  - (b) the Department of Enterprise, Trade and Investment for Northern Ireland, 30
  - (c) the Treasury,
  - (d) the Bank of England,
  - (e) the Financial Services Authority, or
  - (f) the Commissioners for Her Majesty’s Revenue and Customs.
- (4) It does not apply to disclosure – 35
  - (a) for the purpose of assisting a body designated by an order under section 46 of the Companies Act 1989 (c. 40) (delegation of functions of the Secretary of State) to exercise its functions under Part 2 of that Act;
  - (b) with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by an accountant or auditor of his professional duties; 40
  - (c) 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 –
    - (i) the Companies Acts,
    - (ii) the insider dealing legislation, 45
    - (iii) the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

- (iv) the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
  - (v) the Financial Services and Markets Act 2000 (c. 8);
  - (d) 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, directors' disqualification or insolvency; 5
  - (e) for the purpose of enabling or assisting the Bank of England to exercise its functions; 10
  - (f) for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions;
  - (g) for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following –
    - (i) the legislation relating to friendly societies or to industrial and provident societies, 15
    - (ii) the Building Societies Act 1986 (c. 53),
    - (iii) Part 7 of the Companies Act 1989 (c. 40),
    - (iv) the Financial Services and Markets Act 2000; or
  - (h) in pursuance of any Community obligation. 20
- (5) It does not apply to disclosure to a body exercising functions of a public nature under legislation in any country or territory outside the United Kingdom that appear to the authorised person to be similar to his functions under section 439 for the purpose of enabling or assisting that body to exercise those functions.
- (6) In determining whether to disclose information to a body in accordance with subsection (5), the authorised person must have regard to the following considerations – 25
- (a) whether the use which the body is likely to make of the information is sufficiently important to justify making the disclosure;
  - (b) whether the body has adequate arrangements to prevent the information from being used or further disclosed other than – 30
    - (i) for the purposes of carrying out the functions mentioned in that subsection, or
    - (ii) for other purposes substantially similar to those for which information disclosed to the authorised person could be used or further disclosed. 35

#### **445 Power to amend categories of permitted disclosure**

- (1) The Secretary of State may by order amend section 444(3), (4) and (5).
- (2) An order under this section must not –
  - (a) amend subsection (3) of that section (UK public authorities) by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function); 40
  - (b) amend subsection (4) of that section (purposes for which disclosure permitted) by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature; 45
  - (c) amend subsection (5) of that section (overseas regulatory authorities) so as to have the effect of permitting disclosures to be made to a body



other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.

- (3) An order under this section is subject to negative resolution procedure.

## CHAPTER 13

### SUPPLEMENTARY PROVISIONS

5

#### *Accounting and reporting standards*

#### **446 Accounting standards**

- (1) In this Part “accounting standards” means statements of standard accounting practice issued by such body or bodies as may be prescribed by regulations.
- (2) References in this Part to accounting standards applicable to a company’s annual accounts are to such standards as are, in accordance with their terms, relevant to the company’s circumstances and to the accounts. 10
- (3) Regulations under this section may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate. 15

#### **447 Reporting standards**

- (1) In this Part, “reporting standards” means statements of standard reporting practice that –
- (a) relate to operating and financial reviews, and
  - (b) are issued by a body or bodies specified by order of the Secretary of State. 20
- (2) References in this Part to relevant reporting standards, in relation to a company’s operating and financial review, are to such standards as are, in accordance with their terms, applicable to the company’s circumstances and to the review. 25
- (3) Where or to the extent that the directors of a company have complied with a reporting standard, they are presumed (unless the contrary is proved) to have complied with the corresponding requirements of this Part relating to the contents of an operating and financial review.
- (4) An order under this section is subject to negative resolution procedure. 30
- (5) The Secretary of State may make provision by regulations –
- (a) for the issuing by a body or bodies specified by order of the Secretary of State of standards in relation to matters to be contained in reports which are required by this Part to be prepared by the directors of a company; 35
  - (b) for directors of a company who have complied with any such standard, or any of its provisions, in relation to any such report, to be presumed (unless the contrary is proved) to have complied with any requirements of this Part relating to the contents of the report to which the standard or provision relates. 40
- (6) Any such regulations are subject to negative resolution procedure.

*Companies qualifying as medium-sized*

**448 Companies qualifying as medium-sized: general**

- (1) A company qualifies as medium-sized in relation to a financial year if the qualifying conditions are met –
- (a) in the case of the company’s first financial year, in that year, and 5
  - (b) in the case of any subsequent financial year, in that year and the preceding year.
- (2) A company is treated as qualifying as medium-sized in relation to a financial year (other than its first financial year) –
- (a) if the qualifying conditions are not met in relation to the financial year in question but it qualified under subsection (1) in relation to the previous financial year; or 10
  - (b) if the qualifying conditions are met in relation to the financial year in question and it was treated as qualifying in relation to the previous year by virtue of paragraph (a); or 15
  - (c) if the qualifying conditions are not met in relation to the financial year in question but it qualified under paragraph (b) in relation to the previous financial year.
- (3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements – 20
- |                        |                             |
|------------------------|-----------------------------|
| 1. Turnover            | Not more than £22.8 million |
| 2. Balance sheet total | Not more than £11.4 million |
| 3. Number of employees | Not more than 250           |
- (4) For a period that is a company’s financial year but not in fact a year the maximum figures for turnover must be proportionately adjusted. 25
- (5) The balance sheet total means the aggregate of the amounts shown as assets in the company’s balance sheet.
- (6) The number of employees means the average number of persons employed by the company in the year, determined as follows –
- (a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not), 30
  - (b) add together the monthly totals, and
  - (c) divide by the number of months in the financial year.
- (7) This section is subject to section 449 (companies qualifying as medium-sized: parent companies). 35

**449 Companies qualifying as medium-sized: parent companies**

- (1) A parent company qualifies as a medium-sized company in relation to a financial year only if the group headed by it qualifies as a medium-sized group.

- (2) A group qualifies as medium-sized in relation to a financial year if the qualifying conditions are met –
- (a) in the case of the parent company’s first financial year, in that year, and
  - (b) in the case of any subsequent financial year, in that year and the preceding year. 5
- (3) A group is treated as qualifying as medium-sized in relation to a financial year (other than the parent company’s first financial year) –
- (a) if the qualifying conditions are not met in relation to the financial year in question but it qualified under subsection (2) in relation to the previous financial year; or 10
  - (b) if the qualifying conditions are met in relation to the financial year in question and it was treated as qualifying in relation to the previous year by virtue of paragraph (a); or
  - (c) if the qualifying conditions are not met in relation to the financial year in question but it qualified under paragraph (b) in relation to the previous financial year. 15
- (4) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements –
- 1. Aggregate turnover                      Not more than £22.8 million net (or £27.36 million gross) 20
  - 2. Aggregate balance sheet total        Not more than £11.4 million net (or £13.68 million gross)
  - 3. Aggregate number of employees      Not more than 250
- (5) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 360 for each member of the group. 25
- (6) In relation to the aggregate figures for turnover and balance sheet total –
- “net” means after any set-offs and other adjustments made to eliminate group transactions –
- (a) in the case of Companies Act accounts, in accordance with regulations under section 382, 30
  - (b) in the case of IAS accounts, in accordance with international accounting standards; and
- “gross” means without those set-offs and other adjustments.
- A company may satisfy the relevant requirements on the basis of either the net or the gross figure. 35
- (7) The figures for each subsidiary undertaking shall be those included in its individual accounts for the relevant financial year, that is –
- (a) if its financial year ends with that of the parent company, that financial year, and
  - (b) if not, its financial year ending last before the end of the financial year of the parent company. 40

If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

#### **450 Companies excluded from being treated as medium-sized**

- (1) A company is not entitled to take advantage of any of the provisions of this Part relating to companies qualifying as medium-sized if it was at any time within the financial year in question –
- (a) a public company, 5
  - (b) a company that –
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, or
    - (ii) carries on insurance market activity, or
  - (c) a member of an ineligible group. 10
- (2) A group is ineligible if any of its members is –
- (a) a public company,
  - (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market, or
  - (c) a person who – 15
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or
    - (ii) carries on insurance market activity.

*Other supplementary provisions*

#### **451 Preparation and filing of accounts in euros 20**

- (1) The amounts set out in the annual accounts of a company may also be shown in the same accounts translated into euros.
- (2) When complying with section 424 (duty to file accounts and reports), the directors of a company may deliver to the registrar an additional copy of the company's annual accounts in which the amounts have been translated into euros. 25
- (3) In both cases –
- (a) the amounts must have been translated at the exchange rate prevailing on the date to which the balance sheet is made up, and
  - (b) that rate must be disclosed in the notes to the accounts. 30
- (4) For the purposes of sections 417 and 418 (requirements in connection with published accounts) any additional copy of the company's annual accounts delivered to the registrar under subsection (2) above shall be treated as statutory accounts of the company.
- In the case of such a copy, references in those sections to the auditor's report on the company's annual accounts shall be read as references to the auditor's report on the annual accounts of which it is a copy. 35

#### **452 Power to apply provisions to banking partnerships**

- (1) The Secretary of State may by regulations apply to banking partnerships, subject to such exceptions, adaptations and modifications as he considers appropriate, the provisions of this Part (and of regulations made under this Part) applying to banking companies. 40

- (2) A “banking partnership” means a partnership which has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8).  
But a partnership is not a banking partnership if it has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission. 5
- (3) Expressions used in this section that are also used in the provisions regulating activities under the Financial Services and Markets Act 2000 have the same meaning here as they do in those provisions.  
See section 22 of that Act, orders made under that section and Schedule 2 to that Act. 10
- (4) Regulations under this section are subject to affirmative resolution procedure.

#### 453 Meaning of “annual accounts” and related expressions

- (1) In this Part a company’s “annual accounts”, in relation to a financial year, means – 15
- (a) the company’s individual accounts for that year (see section 372), and
  - (b) any group accounts prepared by the company for that year (see sections 376 and 377).
- This is subject to section 386 (option to omit individual profit and loss account from annual accounts where information given in group accounts).
- (2) In the case of an unquoted company, its “annual accounts and reports” for a financial year are – 20
- (a) its annual accounts,
  - (b) the directors’ report, and
  - (c) the auditor’s report on those accounts and the directors’ report (unless the company is exempt from audit). 25
- (3) In the case of a quoted company, its “annual accounts and reports” for a financial year are – 30
- (a) its annual accounts,
  - (b) the directors’ remuneration report,
  - (c) the directors’ report,
  - (d) the operating and financial review, and
  - (e) the auditor’s report on those accounts, on the auditable part of the directors’ remuneration report and on the directors’ report.
- (4) Where the directors of a company take advantage of the exemption conferred by section 464 (small charities: accountant’s report in lieu of audit), the references in this section to the auditor’s report shall be read as references to the report made for the purposes of section 464. 35

#### 454 Notes to the accounts

- (1) Information required by this Part to be given in notes to a company’s annual accounts may be contained in the accounts or in a separate document annexed to the accounts. 40
- (2) References in this Part to a company’s annual accounts, or to a balance sheet or profit and loss account, include notes to the accounts giving information which is required by any provision of this Act or international accounting standards,

and required or allowed by any such provision to be given in a note to company accounts.

#### **455 Parliamentary procedure for certain regulations under this Part**

- (1) This section applies to regulations under the following provisions of this Part— 5
- section 374 (Companies Act individual accounts),
  - section 382 (Companies Act group accounts),
  - section 387 (information about related undertakings),
  - section 390 (information about directors’ benefits: remuneration, pensions and compensation for loss of office), 10
  - section 394 (contents of directors’ report: general),
  - section 399 (contents of operating and financial review),
  - section 402 (contents of directors’ remuneration report),
  - section 427 (filing obligations of companies subject to small companies regime), 15
  - section 428 (filing obligations of medium-sized companies).
- (2) Any such regulations may make consequential amendments or repeals in other provisions of this Act, or in other enactments.
- (3) Regulations that— 20
- (a) restrict the classes of company which have the benefit of any exemption, exception or special provision,
  - (b) require additional matter to be included in a document of any class, or
  - (c) otherwise render the requirements of this Part more onerous,
- are subject to affirmative resolution procedure.
- (4) Otherwise, the regulations are subject to negative resolution procedure. 25

#### **456 Minor definitions**

- (1) In this Part—
- “group” means a parent undertaking and its subsidiary undertakings;
  - “IAS Regulation” means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards; 30
  - “included in the consolidation”, in relation to group accounts, or “included in consolidated group accounts”, means that the undertaking is included in the accounts by the method of full (and not proportional) consolidation, and references to an undertaking excluded from consolidation shall be construed accordingly; 35
  - “insurance market activity” has the meaning given in section 316(3) of the Financial Services and Markets Act 2000 (c. 8);
  - “international accounting standards” means the international accounting standards, within the meaning of the IAS Regulation, adopted from time to time by the European Commission in accordance with that Regulation; 40
  - “listing rules” has the same meaning as in Part 6 of the Financial Services and Markets Act 2000 (see section 73A of that Act);

- “profit and loss account”, in relation to a company that prepares IAS accounts, includes an income statement or other equivalent financial statement required to be prepared by international accounting standards;
- “regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000 (c. 8), except that it does not include activities of the kind specified in any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 –
- (a) article 25A (arranging regulated mortgage contracts),
  - (b) article 39A (assisting administration and performance of a contract of insurance),
  - (c) article 53A (advising on regulated mortgage contracts), or
  - (d) article 21 (dealing as agent), article 25 (arranging deals in investments) or article 53 (advising on investments) where the activity concerns relevant investments that are not contractually based investments (within the meaning of article 3 of that Order);
- “turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of –
- (a) trade discounts,
  - (b) value added tax, and
  - (c) any other taxes based on the amounts so derived.
- (2) In the case of an undertaking not trading for profit, any reference in this Part to a profit and loss account is to an income and expenditure account. References to profit and loss and, in relation to group accounts, to a consolidated profit and loss account shall be construed accordingly.

## PART 16

### AUDIT

#### CHAPTER 1

##### REQUIREMENT FOR AUDITED ACCOUNTS

###### *Requirement for audited accounts*

#### **457 Requirement for audited accounts**

- (1) A company’s annual accounts for a financial year must be audited in accordance with this Part unless the company –
- (a) is exempt from audit under –
    - section 459 (small companies),
    - section 462 (dormant companies), or
    - section 464 (charities: accountant’s report in lieu of audit);or
  - (b) is exempt from the requirements of this Part under section 473 (non-profit-making companies subject to public sector audit).

- 
- (2) A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.
- (3) A company is not entitled to exemption under any of the provisions mentioned in subsection (1)(a) unless its balance sheet contains a statement by the directors to the effect that— 5
- (a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with section 458, and
- (b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts. 10
- (4) The statement required by subsection (2) or (3) must appear on the balance sheet above the signature required by section 392.

#### 458 Right of members to require audit

- (1) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 457(1)(a) may by notice under this section require it to obtain an audit of its accounts for a financial year. 15
- (2) The notice must be given by—
- (a) members holding not less in total than 10% in nominal value of the company's issued share capital, or any class of it, or 20
- (b) if the company does not have a share capital, not less than 10% in number of the members of the company.
- (3) The notice may not be given before the financial year to which it relates and must be given not later than one month before the end of that year.

*Exemption from audit: small companies* 25

#### 459 Small companies: conditions for exemption from audit

- (1) A company that meets the following conditions in respect of a financial year is exempt from the requirements of this Act relating to the audit of accounts for that year.
- (2) The conditions are— 30
- (a) that the company qualifies as a small company in relation to that year,
- (b) that its turnover in that year is not more than £5.6 million, and
- (c) that its balance sheet total for that year is not more than £2.8 million.
- (3) In relation to a company that is a charity, for the condition in subsection (2)(b) substitute the condition that its gross income for the year is not more than £90,000. 35
- (4) For a period which is a company's financial year but not in fact a year the maximum figures for turnover or gross income shall be proportionately adjusted.
- (5) For the purposes of this section— 40
- (a) whether a company qualifies as a small company shall be determined in accordance with section 360(1) to (6),



- (b) “balance sheet total” has the same meaning as in that section, and
  - (c) “gross income” means the company’s income from all sources, as shown in the company’s income and expenditure account.
- (6) This section has effect subject to –
- section 457(2) and (3) (requirements as to statements to be contained in balance sheet), 5
  - section 458 (right of members to require audit),
  - section 460 (companies excluded from small companies exemption), and
  - section 461 (availability of small companies exemption in case of group company). 10

#### **460 Companies excluded from small companies exemption**

- (1) A company is not entitled to the exemption conferred by section 459 (small companies) if it was at any time within the financial year in question –
- (a) a public company,
  - (b) a company that – 15
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity,
    - (ii) carries on insurance market activity, or
    - (iii) is an appointed representative within the meaning of section 39 of that Act (other than an appointed representative whose scope of appointment is limited to activities that are not regulated activities for the purposes of this Part), 20
  - (c) a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or an employers’ association as defined in section 122 of that Act or Article 4 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)), or 25
  - (d) a member of an ineligible group.
- (2) A group is ineligible if any of its members is –
- (a) a public company, 30
  - (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market in an EEA State, or
  - (c) a person who –
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or 35
    - (ii) carries on insurance market activity.

#### **461 Availability of small companies exemption in case of group company**

- (1) A company is not entitled to the exemption conferred by section 459 (small companies) in respect of a financial year during any part of which it was a group company unless – 40
- (a) the conditions specified in subsection (2) below are met, or
  - (b) subsection (3) applies.
- (2) The conditions are –
- (a) that the group –
    - (i) qualifies as a small group in relation to that financial year, and 45

- (ii) was not at any time in that year an ineligible group;
- (b) that the group’s aggregate turnover in that year is—
- (i) in the case of a company registered in England and Wales or Northern Ireland that is a charity, not more than £700,000 net (or £840,000 gross), 5
- (ii) in the case of a company registered in Scotland that is a charity, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10), and
- (iii) in any other case, not more than £5.6 million net (or £6.72 million gross); 10
- (c) that the group’s aggregate balance sheet total for that year is not more than £2.8 million net (or £3.36 million gross).
- (3) A company is not excluded by subsection (1) if, throughout the whole of the period or periods during the financial year when it was a group company, it was both a subsidiary undertaking and dormant. 15
- (4) In this section—
- (a) “group company” means a company that is a parent company or a subsidiary undertaking, and
- (b) “the group”, in relation to a group company, means that company together with all its associated undertakings. 20
- For this purpose undertakings are associated if one is a subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking.
- (5) For the purposes of this section—
- (a) whether a group qualifies as small shall be determined in accordance with section 361 (qualifying conditions for small companies accounts regime), 25
- (b) “ineligible group” has the meaning given by section 362(2);
- (c) a group’s aggregate turnover and aggregate balance sheet total shall be determined as for the purposes of section 361; 30
- (d) “net” and “gross” have the same meaning as in that section.
- (6) The provisions mentioned in subsection (5) apply for the purposes of this section as if all the bodies corporate in the group were companies.

*Exemption from audit: dormant companies*

**462 Dormant companies: conditions for exemption from audit** 35

- (1) A company is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if—
- (a) it has been dormant since its formation, or
- (b) it has been dormant since the end of the previous financial year and the following conditions are met. 40
- (2) The conditions are that the company—
- (a) as regards its individual accounts for the financial year in question—
- (i) is entitled to prepare accounts in accordance with the small companies regime (see sections 359 to 362), or

- (ii) would be so entitled but for having been a public company or a member of an ineligible group, and
  - (b) is not required to prepare group accounts for that year.
- (3) This section has effect subject to –
  - section 457(2) and (3) (requirements as to statements to be contained in balance sheet),
  - section 458 (right of members to require audit), and
  - section 463 (companies excluded from dormant companies exemption).

#### **463 Companies excluded from dormant companies exemption**

- A company is not entitled to the exemption conferred by section 462 (dormant companies) if it was at any time within the financial year in question a company that –
- (a) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, or
  - (b) carries on insurance market activity.

*Exemption from audit: certain charities*

#### **464 Small charities: accountant’s report in lieu of audit**

- (1) A company that is a charity is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if –
  - (a) it meets the conditions set out in subsection (2) below, and
  - (b) the directors cause a report in respect of the company’s individual accounts for that year to be prepared in accordance with section 467 and made to the company’s members.
- (2) The conditions referred to above are that –
  - (a) the company qualifies as a small company in relation to that year;
  - (b) its balance sheet total for that year is –
    - (i) in the case of a company registered in England and Wales or Northern Ireland, not more than £1.4 million, and
    - (ii) in the case of a company registered in Scotland, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10);
  - (c) its gross income in that year is –
    - (i) in the case of a company registered in England and Wales or Northern Ireland, more than £90,000 but not more than £250,000, and
    - (ii) in the case of a company registered in Scotland, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005.
- (3) For a period which is a company’s financial year but not in fact a year the maximum figure for gross income shall be proportionately adjusted.
- (4) For the purposes of this section –
  - (a) whether a company qualifies as a small company shall be determined in accordance with section 360(1) to (6);
  - (b) “balance sheet total” has the same meaning as in that section; and

- (c) “gross income” means the company’s income from all sources, as shown in the company’s income and expenditure account.
- (5) This section has effect subject to –
- section 457(2) and (3) (requirements as to statements to be contained in balance sheet), 5
  - section 458 (right of members to require audit),
  - section 465 (companies excluded from report exemption), and
  - section 466 (availability of report exemption in case of group company).

#### 465 Companies excluded from report exemption

- (1) A company is not entitled to the exemption conferred by section 464 (charities: accountant’s report in lieu of audit) if it was at any time within the financial year in question –
- (a) a public company,
  - (b) a company that –
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to carry on a regulated activity, 15
    - (ii) carries on insurance market activity, or
    - (iii) is an appointed representative within the meaning of section 39 of that Act (other than an appointed representative whose scope of appointment is limited to activities that are not regulated activities for the purposes of this Part), 20
  - (c) a special register body as defined in section 117(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) or an employers’ association as defined in section 122 of that Act or Article 4 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)), or 25
  - (d) a member of an ineligible group.
- (2) A group is ineligible if any of its members is –
- (a) a public company,
  - (b) a body corporate (other than a company) whose shares are admitted to trading on a regulated market in an EEA State, or 30
  - (c) a person who –
    - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or
    - (ii) carries on insurance market activity. 35

#### 466 Availability of report exemption in case of group company

- (1) A company is not entitled to the exemption conferred by section 464 (charities: accountant’s report in lieu of audit) in respect of a financial year during any part of which it was a group company unless –
- (a) the conditions specified in subsection (2) below are met, or 40
  - (b) subsection (3) applies.
- (2) The conditions are –
- (a) that the group –
    - (i) qualifies as a small group in relation to that financial year, and
    - (ii) was not at any time in that year an ineligible group; 45

- (b) that the group’s aggregate turnover in that year is –
    - (i) in the case of a company registered in England and Wales or Northern Ireland, not more than £700,000 net (or £840,000 gross), and
    - (ii) in the case of a company registered in Scotland, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10); 5
  - (c) that the group’s aggregate balance sheet total for that year is –
    - (i) in the case of a company registered in England and Wales or Northern Ireland, not more than £2.8 million net (or £3.36 million gross), and 10
    - (ii) in the case of a company registered in Scotland, of such amount as may be specified by regulations under the Charities and Trustee Investment (Scotland) Act 2005.
  - (3) A company is not excluded by subsection (1) if, throughout the whole of the period or periods during the financial year when it was a group company, it was both a subsidiary undertaking and dormant. 15
  - (4) In this section –
    - (a) “group company” means a company that is a parent company or a subsidiary undertaking, and 20
    - (b) “the group”, in relation to a group company, means that company together with all its associated undertakings.

For this purpose undertakings are associated if one is a subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking.
  - (5) For the purposes of this section – 25
    - (a) whether a group qualifies as a small group shall be determined in accordance with section 361(2) (conditions for small companies accounts regime),
    - (b) “ineligible group” has the meaning given by section 362,
    - (c) a group’s aggregate turnover and aggregate balance sheet total shall be determined as for the purposes of section 361, and 30
    - (d) “net” and “gross” have the same meaning as in that section.
  - (6) The provisions mentioned in subsection (5) apply for the purposes of this section as if all the bodies corporate in the group were companies.
- 467 The accountant’s report 35**
- (1) The report required for the purposes of section 464 (charities: accountant’s report in lieu of audit) is a report that –
    - (a) is prepared by a person (the “reporting accountant”) who meets the requirements of section 468, and
    - (b) complies with the following provisions. 40
  - (2) The report must state whether in the opinion of the reporting accountant –
    - (a) the accounts of the company for the financial year in question are in agreement with the accounting records kept by the company, and
    - (b) having regard only to, and on the basis of, the information contained in those accounting records, those accounts have been drawn up in a manner consistent with the relevant provisions of this Act. 45

- (3) The relevant provisions of this Act means the provisions specified for the purposes of this section by regulations made by the Secretary of State, so far as are applicable to the company.
- (4) The report must also state that in the opinion of the reporting accountant, having regard only to, and on the basis of, the information contained in the accounting records kept by the company, the company is entitled to exemption from audit under section 464. 5
- (5) The report must state the name of the reporting accountant and be signed and dated –
- (a) where the reporting accountant is an individual, by him; 10
  - (b) where the reporting accountant is a firm, by a person authorised to sign on its behalf.
- (6) Regulations under this section are subject to negative resolution procedure.

#### 468 The reporting accountant

- (1) The reporting accountant must be – 15
- (a) a member of a qualifying body who, under the rules of the body –
    - (i) is entitled to engage in public practice, and
    - (ii) is not ineligible for appointment as a reporting accountant, or
  - (b) a person who –
    - (i) is subject to the rules of a qualifying body in seeking appointment or acting as company auditor, and 20
    - (ii) under those rules, is eligible for such appointment.
- (2) An individual or a firm may be appointed as reporting accountant.
- (3) The references in subsection (1) 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 Part 32 (statutory auditors) or this section. 25
- They include rules relating to the admission and expulsion of members of the body, so far as relevant for the purposes of that Part or this section.
- (4) In this section “qualifying body” means – 30
- (a) the Institute of Chartered Accountants in England and Wales,
  - (b) the Institute of Chartered Accountants of Scotland,
  - (c) the Institute of Chartered Accountants in Ireland,
  - (d) the Association of Chartered Certified Accountants,
  - (e) the Association of Authorised Public Accountants, 35
  - (f) the Association of Accounting Technicians,
  - (g) the Association of International Accountants,
  - (h) the Chartered Institute of Management Accountants, or
  - (i) the Institute of Chartered Secretaries and Administrators.
- (5) A person must not be appointed as reporting accountant unless he meets the independence requirement in section 470. 40

**469 Effect of appointment of a partnership**

- (1) This section applies where a partnership that is not a legal person under the law by which it is governed is appointed as reporting accountant.
- (2) Unless a contrary intention appears, the appointment is of the partnership as such and not of the partners. 5
- (3) Where the partnership ceases, the appointment is to be treated as extending to –
  - (a) any partnership that succeeds to the practice of that partnership, or
  - (b) any other person who succeeds to that practice having previously carried it on in partnership. 10
- (4) For the purposes of subsection (3) –
  - (a) a partnership is 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 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. 15
- (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 company be treated as extending to a partnership, or other person, who succeeds to –
  - (a) the business of the former partnership, or
  - (b) such part of it as is agreed by the company is to be treated as comprising the appointment. 20

**470 Independence requirement** 25

- (1) A person may not be appointed as reporting accountant –
  - (a) if he is –
    - (i) an officer or employee of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; 30
  - (b) if he is –
    - (i) an officer or employee of an associated undertaking of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; 35
  - (c) if there exists between –
    - (i) the person or an associate of his, and
    - (ii) the company or an associated undertaking of the company, a connection of any such description as may be specified by regulations made by the Secretary of State. 40
- (2) An auditor of the company is not regarded as an officer or employee of the company for this purpose.
- (3) In this section –

“associated undertaking” means –

- (a) a parent undertaking or subsidiary undertaking of the company, or
- (b) a subsidiary undertaking of a parent undertaking of the company; and

“associate” has the meaning given by section 471. 5

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

#### 471 Meaning of “associate”

- (1) This section defines “associate” for the purposes of section 470 (independence requirement).
- (2) In relation to an individual, “associate” means – 10
  - (a) that individual’s spouse or 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 – 15
  - (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.
- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means – 20
  - (a) any body corporate of which that partnership is a director,
  - (b) any employee of or partner in that partnership, and
  - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership that is not a legal person under the law by which it is governed “associate” means any person who is an associate of any of the partners. 25
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”.

#### 472 Rights of reporting accountant

Where the directors of a company take advantage of the exemption conferred by section 464 (small charities: accountant’s report in lieu of audit), sections 491 to 493 (auditor’s rights to information) have effect in relation to the reporting accountant as they would in relation to an auditor. 30

#### *Companies subject to public sector audit*

#### 473 Non-profit-making companies subject to public sector audit 35

- (1) The requirements of this Part as to audit of accounts do not apply to a company for a financial year if it is non-profit-making and its accounts –
  - (a) are subject to audit –
    - (i) by the Comptroller and Auditor General by virtue of an order under section 25(6) of the Government Resources and Accounts Act 2000 (c. 20), or 40



- (ii) by the Auditor General for Wales by virtue of section 96, or an order under section 144, of the Government of Wales Act 1998 (c. 38);
  - (b) are accounts –
    - (i) in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies, or 5
    - (ii) that are subject to audit by the Auditor General for Scotland by virtue of an order under section 474 (Scottish public sector companies: audit by Auditor General for Scotland); or 10
  - (c) are subject to audit by the Comptroller and Auditor General for Northern Ireland by virtue of an order under Article 5(3) of the Audit and Accountability (Northern Ireland) Order 2003 (S.I. 2003/418 (N.I. 5)).
- (2) In the case of a company that is a parent company or a subsidiary undertaking, subsection (1) applies only if every group undertaking is non-profit-making. 15
- (3) In this section “non-profit-making” has the same meaning as in Article 48 of the Treaty establishing the European Community.
- (4) This section has effect subject to section 457(2) (balance sheet to contain statement that company entitled to exemption under this section). 20

#### **474 Scottish public sector companies: audit by Auditor General for Scotland**

- (1) The Scottish Ministers may by order provide for the accounts of a company having its registered office in Scotland to be audited by the Auditor General for Scotland.
- (2) An order under subsection (1) may be made in relation to a company only if it appears to the Scottish Ministers that the company – 25
  - (a) exercises in or as regards Scotland functions of a public nature none of which relate to reserved matters (within the meaning of the Scotland Act 1998 (c. 46)), or
  - (b) is entirely or substantially funded from a body having accounts falling within paragraph (a) or (b) of subsection (3). 30
- (3) Those accounts are –
  - (a) accounts in relation to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (audit of accounts: Auditor General for Scotland) applies, 35
  - (b) accounts which are subject to audit by the Auditor General for Scotland by virtue of an order under this section.
- (4) An order under subsection (1) may make such supplementary or consequential provision (including provision amending an enactment) as the Scottish Ministers think expedient. 40
- (5) An order under subsection (1) shall not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, the Scottish Parliament.

## CHAPTER 2

## APPOINTMENT OF AUDITORS

*Private companies***475 Appointment of auditors of private company: general**

- (1) An auditor or auditors of a private company must be appointed before the end of each period for appointing auditors unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required for the financial year in question. 5
- (2) The members of a private company may appoint an auditor or auditors by ordinary resolution – 10
- (a) during the period for appointing auditors,
  - (b) if the company should have appointed an auditor or auditors during the period for appointing auditors but failed to do so, or
  - (c) where the directors have power to appoint under subsection (3) but have failed to do so. 15
- (3) The directors of a private company may appoint an auditor or auditors of the company –
- (a) at any time before the company’s first period for appointing auditors,
  - (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company’s next period for appointing auditors, or 20
  - (c) to fill a casual vacancy in the office of auditor.
- (4) An auditor or auditors of a private company may only be appointed –
- (a) in accordance with this section, or
  - (b) in accordance with section 476 (default power of Secretary of State). 25

**476 Appointment of auditors of private company: default power of Secretary of State**

- (1) If a private company fails to appoint an auditor or auditors in accordance with section 475(1), the Secretary of State may appoint one or more persons to fill the vacancy. 30
- (2) In such a case the company must within one week of the end of the period for appointing auditors give notice to the Secretary of State of his power having become exercisable.
- (3) If a company fails to give the notice required by this section, an offence is committed by – 35
- (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 40

#### **477 Period for appointing auditors**

The “period for appointing auditors”, in relation to a private company, is the period of 28 days beginning with—

- (a) the end of the period allowed for sending out copies of the company’s accounts and reports (see section 405), or 5
- (b) if earlier the day on which copies of the company’s accounts and reports are sent out under section 404.

#### **478 Term of office of auditors of private company**

- (1) An auditor or auditors of a private company hold office in accordance with the terms of their appointment, subject to the requirements that— 10
  - (a) they do not take office until any previous auditor or auditors cease to hold office, and
  - (b) they cease to hold office at the end of the next period for appointing auditors unless re-appointed.
- (2) Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless— 15
  - (a) he was appointed by the directors, or
  - (b) the company’s articles require actual re-appointment, or
  - (c) the deemed re-appointment is prevented by the members under section 479, or 20
  - (d) the members have resolved that he should not be re-appointed, or
  - (e) the directors have resolved that no auditor or auditors should be appointed for the financial year in question.
- (3) This is without prejudice to the provisions of this Part as to removal and resignation of auditors. 25
- (4) No account shall be taken of any loss of the opportunity of deemed re-appointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason. 30

#### **479 Prevention by members of deemed re-appointment of auditor**

- (1) An auditor of a private company is not deemed to be re-appointed under section 478(2) if the company has received notices under this section from members who hold at least the requisite percentage of the total voting rights of all members who would be entitled to vote on a resolution that the auditor should not be re-appointed. 35
- (2) The “requisite percentage” is 5%, or such lower percentage as is specified for this purpose in the company’s articles.
- (3) A notice under this section— 40
  - (a) may be in hard copy or electronic form,
  - (b) must be authenticated by the person or persons giving it, and
  - (c) must be received by the company before the end of the accounting reference period immediately preceding the time when the deemed re-appointment would have effect.

*Public companies*

- 480 Appointment of auditors of public company: general**
- (1) An auditor or auditors of a public company must be appointed before the end of each accounts meeting of the company unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required for the financial year in question. 5
  - (2) The members of a public company may appoint an auditor or auditors by ordinary resolution –
    - (a) at an accounts meeting,
    - (b) if the company should have appointed an auditor or auditors at the last accounts meeting but failed to do so, or 10
    - (c) where the directors have power to appoint under subsection (3) but have failed to do so.
  - (3) The directors of a public company may appoint an auditor or auditors of the company – 15
    - (a) at any time before the company’s first accounts meeting,
    - (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company’s next accounts meeting, or
    - (c) to fill a casual vacancy in the office of auditor. 20
  - (4) An auditor or auditors of a public company may only be appointed –
    - (a) in accordance with this section, or
    - (b) in accordance with section 481 (default power of Secretary of State).
- 481 Appointment of auditors of public company: default power of Secretary of State** 25
- (1) If a public company fails to appoint an auditor or auditors in accordance with section 480(1), the Secretary of State may appoint one or more persons to fill the vacancy.
  - (2) In such a case the company must within one week of the end of the accounts meeting give notice to the Secretary of State of his power having become exercisable. 30
  - (3) If a company fails to give the notice required by this section, an offence is committed by –
    - (a) the company, and
    - (b) every officer of the company who is in default. 35
  - (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.
- 482 Term of office of auditors of public company** 40
- (1) The auditor or auditors of a public company hold office in accordance with the terms of their appointment, subject to the requirements that –

- (a) they do not take office until the previous auditor or auditors have ceased to hold office, and
  - (b) they cease to hold office at the conclusion of the accounts meeting next following their appointment, unless re-appointed.
- (2) This is without prejudice to the provisions of this Part as to removal and resignation of auditors. 5

*General provisions*

**483 Fixing of auditor’s remuneration**

- (1) The remuneration of an auditor appointed by the members of a company must be fixed by the members by ordinary resolution or in such manner as the members may by ordinary resolution determine. 10
- (2) The remuneration of an auditor appointed by the directors of a company must be fixed by the directors.
- (3) The remuneration of an auditor appointed by the Secretary of State must be fixed by the Secretary of State. 15
- (4) For the purposes of this section “remuneration” includes sums paid in respect of expenses.
- (5) This section applies in relation to benefits in kind as to payments of money.

**484 Disclosure of terms of audit appointment**

- (1) The Secretary of State may make provision by regulations for securing the disclosure of the terms on which a company’s auditor is appointed, remunerated or performs his duties. 20  
Nothing in the following provisions of this section affects the generality of this power.
- (2) The regulations may – 25
- (a) require disclosure of –
- (i) a copy of any terms that are in writing and
  - (ii) a written memorandum setting out any terms that are not in writing;
- (b) require disclosure to be at such times, in such places and by such means as are specified in the regulations; 30
- (c) require the place and means of disclosure to be stated –
- (i) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts), 35
  - (ii) in the directors’ report, or
  - (iii) in the auditor’s report on the company’s annual accounts.
- (3) The provisions of this section apply to a variation of the terms mentioned in subsection (1) as they apply to the original terms.
- (4) Regulations under this section are subject to negative resolution procedure. 40

#### **485 Disclosure of services provided by auditor or associates and related remuneration**

- (1) The Secretary of State may make provision by regulations for securing the disclosure of—
- (a) the nature of any services provided for a company by the company’s auditor (whether in his capacity as auditor or otherwise) or by his associates; 5
  - (b) the amount of any remuneration received or receivable by a company’s auditor, or his associates, in respect of any such services.
- Nothing in the following provisions of this section affects the generality of this power. 10
- (2) The regulations may provide—
- (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described); 15
  - (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described);
  - (c) for the disclosure of separate amounts so received or receivable by the company’s auditor or any of his associates, or of aggregate amounts so received or receivable by all or any of those persons. 20
- (3) The regulations may—
- (a) provide that “remuneration” includes sums paid in respect of expenses;
  - (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value; 25
  - (c) apply to services provided for associates of a company as well as to those provided for a company;
  - (d) define “associate” in relation to an auditor and a company respectively.
- (4) The regulations may provide that any disclosure required by the regulations is to be made— 30
- (a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
  - (b) in the directors’ report, or 35
  - (c) in the auditor’s report on the company’s annual accounts.
- (5) If the regulations provide that any such disclosure is to be made as mentioned in subsection (4)(a) or (b), the regulations may require the auditor to supply the directors of the company with any information necessary to enable the disclosure to be made. 40
- (6) Regulations under this section are subject to negative resolution procedure.

## CHAPTER 3

### FUNCTIONS OF AUDITOR

#### *Auditor's report*

#### **486 Auditor's report on company's annual accounts**

- (1) A company's auditor must make a report to the company's members on all annual accounts of the company of which copies are, during his tenure of office –
  - (a) in the case of a private company, to be sent out to members under section 404; 5
  - (b) in the case of a public company, to be laid before the company in general meeting under section 420. 10
- (2) The auditor's report must include –
  - (a) an introduction identifying the annual accounts that are the subject of the audit and the financial reporting framework that has been applied in their preparation, and 15
  - (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.
- (3) The report must state clearly whether, in the auditor's opinion, the annual accounts –
  - (a) give a true and fair view – 20
    - (i) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year,
    - (ii) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year,
    - (iii) in the case of group accounts, of the state of affairs as at the end of the financial year and of the profit or loss for the financial year of the undertakings included in the consolidation as a whole, so far as concerns members of the company; 25
  - (b) have been properly prepared in accordance with the relevant financial reporting framework; and 30
  - (c) have been prepared in accordance with the requirements of this Act (and, where applicable, Article 4 of the IAS Regulation).
- (4) The auditor's report –
  - (a) must be either unqualified or qualified, and
  - (b) must include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the report. 35

#### **487 Auditor's report on directors' report**

The auditor must state in his report on the company's annual accounts whether in his opinion the information given in the directors' report for the financial year for which the accounts are prepared is consistent with those accounts. 40

#### 488 Auditor’s report on operating and financial review

If the company is a quoted company, the auditor must state in his report on the company’s annual accounts –

- (a) whether in his opinion the information given in the operating and financial review for the financial year for which the accounts are prepared is consistent with those accounts, and 5
- (b) whether any matters have come to his attention, in the performance of his functions as auditor of the company, which in his opinion are inconsistent with the information given in the operating and financial review. 10

#### 489 Auditor’s report on auditable part of directors’ remuneration report

- (1) If the company is a quoted company, the auditor, in his report on the company’s annual accounts for the financial year, must –
  - (a) report to the company’s members on the auditable part of the directors’ remuneration report, and 15
  - (b) state whether in his opinion that part of the directors’ remuneration report has been properly prepared in accordance with this Act.
- (2) For the purposes of this Part, “the auditable part” of a directors’ remuneration report is the part identified as such by regulations under section 402.

*Duties and rights of auditors* 20

#### 490 Duties of auditor

- (1) A company’s auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to –
  - (a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by him, and 25
  - (b) whether the company’s individual accounts are in agreement with the accounting records and returns, and
  - (c) in the case of a quoted company, whether the auditable part of the company’s directors’ remuneration report is in agreement with the accounting records and returns. 30
- (2) If the auditor is of opinion –
  - (a) that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by him, or 35
  - (b) that the company’s individual accounts are not in agreement with the accounting records and returns, or
  - (c) in the case of a quoted company, that the auditable part of its directors’ remuneration report is not in agreement with the accounting records and returns, 40

the auditor shall state that fact in his report.
- (3) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.



- (4) If—
- (a) the requirements of regulations under section 390 (disclosure of directors’ benefits: remuneration, pensions and compensation for loss of office) are not complied with in the annual accounts, or
  - (b) in the case of a quoted company, the requirements of regulations under section 402 as to information forming the auditable part of the directors’ remuneration report are not complied with in that report, the auditor must include in his report, so far as he is reasonably able to do so, a statement giving the required particulars. 5
- (5) If the directors of the company have prepared accounts and reports in accordance with the small companies regime and in the auditor’s opinion they were not entitled so to do, the auditor shall state that fact in his report. 10

#### **491 Auditor’s general right to information**

- (1) An auditor of a company —
- (a) has a right of access at all times to the company’s books, accounts and vouchers (in whatever form they are held), and 15
  - (b) may require any of the following persons to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.
- (2) Those persons are— 20
- (a) any officer or employee of the company;
  - (b) any person holding or accountable for any of the company’s books, accounts or vouchers;
  - (c) any subsidiary undertaking of the company which is a body corporate incorporated in the United Kingdom; 25
  - (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;
  - (e) any person who fell within any of paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate. 30
- (3) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 493.
- (4) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings. 35

#### **492 Auditor’s right to information from overseas subsidiaries**

- (1) Where a parent company has a subsidiary undertaking that is not a body corporate incorporated in the United Kingdom, the auditor of the parent company may require it to obtain from any of the following persons such information or explanations as he may reasonably require for the purposes of his duties as auditor. 40
- (2) Those persons are—
- (a) the undertaking; 45

- (b) any officer, employee or auditor of the undertaking;
  - (c) any person holding or accountable for any of the undertaking's books, accounts or vouchers;
  - (d) any person who fell within paragraph (b) or (c) at a time to which the information or explanations relates or relate. 5
- (3) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person concerned.
- (4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 493. 10
- (5) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

#### **493 Auditor's rights to information: offences**

- (1) A person commits an offence who knowingly or recklessly makes to an auditor of a company a statement (oral or written) that – 15
- (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 491, and
  - (b) is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under subsection (1) is liable – 20
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction – 25
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).
- (3) A person who fails to comply with a requirement under section 491 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanations. 30
- (4) If a parent company fails to comply with section 492, an offence is committed by – 35
- (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Nothing in this section affects any right of an auditor to apply for an injunction (in Scotland, an interdict or an order for specific performance) to enforce any of his rights under section 491 or 492. 40

#### **494 Auditor's rights in relation to resolutions and meetings**

- (1) In relation to a written resolution proposed to be agreed to by a private company, the company's auditor is entitled to receive all such communications

relating to the resolution as, by virtue of any provision of Chapter 2 of Part 13 of this Act, are required to be supplied to a member of the company.

- (2) A company’s auditor is entitled –
- (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive, 5
  - (b) to attend any general meeting of the company, and
  - (c) to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.
- (3) Where the auditor is a firm, the right to attend or be heard at a meeting is exercisable by an individual authorised by the firm in writing to act as its representative at the meeting. 10

*Signature of auditor’s report*

**495 Signature of auditor’s report**

- The auditor’s report must state the name of the auditor and be signed and dated – 15
- (a) where the auditor is an individual, by him;
  - (b) where the auditor is a firm, by the senior statutory auditor.

**496 Senior statutory auditor**

- (1) The senior statutory auditor means the individual identified by the firm as senior statutory auditor in relation to the audit in accordance with – 20
- (a) standards issued by the European Commission, or
  - (b) if there is no applicable standard so issued, any relevant guidance issued by –
    - (i) the Secretary of State, or
    - (ii) a body appointed by order of the Secretary of State. 25
- (2) The person identified as senior statutory auditor must be eligible for appointment as auditor of the company in question (see Chapter 2 of Part 32 of this Act).
- (3) The senior statutory auditor is not, by reason of his having signed the auditor’s report, subject to any civil liability to which he would not otherwise be subject. 30
- (4) An order appointing a body for the purpose of subsection (1)(b)(ii) is subject to negative resolution procedure.

**497 Name of auditor etc to be stated in published copies of auditor’s report**

- (1) Every copy of the auditor’s report that is published by or on behalf of the company must state – 35
- (a) the name of the auditor, and
  - (b) if the auditor is a firm, the name of the senior statutory auditor, subject to the following provisions of this section.
- (2) For the purposes of this section a company is regarded as publishing the report if it publishes, issues or circulates it or otherwise makes it available for public 40

inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

- (3) The auditor’s name or the name of the senior statutory auditor need not be stated if the company –
- (a) considering on reasonable grounds that the statement of the name in published copies of the report would create or be likely to create a serious risk that the auditor, the senior statutory auditor or any other person would be subject to violence or intimidation, has resolved that the name of the auditor or senior statutory auditor should not be so stated, and 5
  - (b) has given notice of the resolution to the Secretary of State. 10
- (4) The notice of the resolution must contain –
- (a) the name and registered number of the company to which the report relates,
  - (b) the financial year of the company to which the report relates, 15
  - (c) the name of the audit firm, and
  - (d) the name of the senior statutory auditor.
- (5) Where the company has so resolved, and given notice to the Secretary of State, every copy of the auditor’s report that is published by or on behalf of the company must state that the company has resolved that the name of the auditor or senior statutory auditor should not be stated. 20
- (6) If a copy of the auditor’s report is published without the required statement of the auditor’s or senior auditor’s name, or the statement required by subsection (5), an offence is committed by –
- (a) the company, and 25
  - (b) every officer of the company 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.

*Offences in connection with auditor’s report*

- 498 Offences in connection with auditor’s report 30**
- (1) A person to whom this section applies commits an offence if he knowingly or recklessly causes a report under section 486 (auditor’s report on company’s annual accounts) to include any matter that is misleading, false or deceptive in a material particular.
- (2) A person to whom this section applies commits an offence if he knowingly or recklessly causes such a report to omit a statement required by –
- (a) section 490(2) (statements that proper accounting records or returns not kept or received or not properly reflected in accounts etc),
  - (b) section 490(3) (statement that necessary information and explanations not obtained), 40
  - (c) section 490(4) (statement of particulars in relation to directors’ remuneration omitted from accounts etc), or
  - (d) section 490(5) (statement that directors wrongly took advantage of exemption from obligation to prepare group accounts).
- (3) This section applies to – 45

- (a) where the auditor is an individual, that individual and any employee or agent of his who is eligible for appointment as auditor of the company;
  - (b) where the auditor is a firm, any director, member, employee or agent of the firm who is eligible for appointment as auditor of the company. 5
- (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.
- 499 Guidance for regulatory and prosecuting authorities: England, Wales and Northern Ireland 10**
  - (1) The Secretary of State may issue guidance for the purpose of helping relevant regulatory and prosecuting authorities to determine how they should carry out their functions in cases where behaviour occurs that –
    - (a) appears to involve the commission of an offence under section 498 (offences in connection with auditor’s report), and 15
    - (b) has been, is being or may be investigated pursuant to arrangements –
      - (i) under paragraph 15 of Schedule 10 (investigation of complaints against auditors and supervisory bodies), or
      - (ii) of a kind mentioned in paragraph 24 of that Schedule (independent investigation for disciplinary purposes of public interest cases). 20
  - (2) The Secretary of State must obtain the consent of the Attorney General before issuing any such guidance.
  - (3) In this section “relevant regulatory and prosecuting authorities” means – 25
    - (a) supervisory bodies within the meaning of Part 32 of this Act,
    - (b) bodies to which the Secretary of State may make grants under section 16(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (bodies concerned with accounting standards etc), 30
    - (c) the Director of the Serious Fraud Office,
    - (d) the Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland, and
    - (e) the Secretary of State.
  - (4) This section does not apply to Scotland. 35
- 500 Guidance for regulatory authorities: Scotland**
  - (1) The Lord Advocate may issue guidance for the purpose of helping relevant regulatory authorities to determine how they should carry out their functions in cases where behaviour occurs that –
    - (a) appears to involve the commission of an offence under section 498 (offences in connection with auditor’s report), and 40
    - (b) has been, is being or may be investigated pursuant to arrangements –
      - (i) under paragraph 15 of Schedule 10 (investigation of complaints against auditors and supervisory bodies), or

- (ii) of a kind mentioned in paragraph 24 of that Schedule (independent investigation for disciplinary purposes of public interest cases).
- (2) The Lord Advocate must consult the Secretary of State before issuing any such guidance. 5
- (3) In this section “relevant regulatory authorities” means –
- (a) supervisory bodies within the meaning of Part 32 of this Act,
  - (b) bodies to which the Secretary of State may make grants under section 16(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (bodies concerned with accounting standards etc), and
  - (c) the Secretary of State.
- (4) This section applies only to Scotland. 10

#### CHAPTER 4

#### REMOVAL, RESIGNATION, ETC OF AUDITORS 15

##### *Removal of auditor*

#### **501 Resolution removing auditor from office**

- (1) The members of a company may by ordinary resolution at any time remove an auditor from office.
- (2) This power is exercisable only in accordance with section 502 (special notice of resolution to remove auditor). 20
- (3) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination –
- (a) of his appointment as auditor, or
  - (b) of any appointment terminating with that as auditor. 25
- (4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

#### **502 Special notice required for resolution removing auditor from office**

- (1) Special notice is required for a resolution at a general meeting of a company removing an auditor from office. 30
- (2) On receipt of notice of such an intended resolution the company must immediately send a copy of it to the person proposed to be removed.
- (3) The auditor proposed to be removed may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company. 35
- (4) The company must (unless the representations are received by it too late for it to do so) –
- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and

- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.
- (5) If a copy of any such representations is not sent out as required because received too late or because of the company’s default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting. 5
- (6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused. 10  
The court may order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- 503 Notice to registrar of resolution removing auditor from office**
- (1) Where a resolution is passed under section 501 (resolution removing auditor from office), the company must give notice of that fact to the registrar within 14 days. 15
- (2) If a company fails to give the notice required by this section, an offence is committed by – 20
- (a) the company, and
- (b) every officer of it who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 25
- 504 Rights of auditor who has been removed from office**
- (1) An auditor who has been removed by resolution under section 501 has, notwithstanding his removal, the rights conferred by section 494(2) in relation to any general meeting of the company – 30
- (a) at which his term of office would otherwise have expired, or
- (b) at which it is proposed to fill the vacancy caused by his removal.
- (2) In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.
- Failure to re-appoint auditor* 35
- 505 Failure to re-appoint auditor: special procedure required for written resolution**
- (1) This section applies where a resolution is proposed as a written resolution of a private company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has expired, or is to expire, at the end of the period for appointing auditors. 40
- (2) The following provisions apply if –

- 
- (a) no period for appointing auditors has ended since the outgoing auditor ceased to hold office, or
- (b) such a period has ended and an auditor or auditors should have been appointed but were not.
- (3) The company must send a copy of the proposed resolution to the person proposed to be appointed and to the outgoing auditor. 5
- (4) The outgoing auditor may, within 14 days after receiving the notice, make with respect to the proposed resolution representations in writing to the company (not exceeding a reasonable length) and request their circulation to members of the company. 10
- (5) The company must circulate the representations together with the copy or copies of the resolution circulated in accordance with section 270 (resolution proposed by directors) or section 272 (resolution proposed by members).
- (6) Where subsection (5) applies – 15
- (a) the period allowed under section 272(3) for service of copies of the proposed resolution is 28 days instead of 21 days, and
- (b) the provisions of section 272(6) and (7) (offences) apply in relation to a failure to comply with that subsection as in relation to a default in complying with that section.
- (7) Copies of the representations need not be circulated if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused. 20
- The court may order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application. 25
- (8) If any requirement of this section is not complied with, the resolution is ineffective.
- 506 Failure to re-appoint auditor: special notice required for resolution at general meeting**
- (1) This section applies to a resolution at a general meeting of a company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has ended, or is to end – 30
- (a) in the case of a private company, at the end of the period for appointing auditors;
- (b) in the case of a public company, at the end of the next accounts meeting. 35
- (2) Special notice is required of such a resolution if –
- (a) in the case of a private company –
- (i) no period for appointing auditors has ended since the outgoing auditor ceased to hold office, or
- (ii) such a period has ended and an auditor or auditors should have been appointed but were not; 40
- (b) in the case of a public company –
- (i) there has been no accounts meeting of the company since the outgoing auditor ceased to hold office, or
- (ii) there has been an accounts meeting at which an auditor or auditors should have been appointed but were not. 45



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

*Resignation of auditor*

**507 Resignation of auditor** 25

- (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company’s registered office.
- (2) The notice is not effective unless it is accompanied by the statement required by section 510.
- (3) An effective notice of resignation operates to bring the auditor’s term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it. 30

**508 Notice to registrar of resignation of auditor**

- (1) Where an auditor resigns the company must within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar of companies. 35
- (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 –
  - (a) on conviction on indictment, to a fine and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum; 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.

### 509 Rights of resigning auditor

- (1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation (see section 510). 5
- (2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting. 10
- (3) He may request the company to circulate to its members –
- (a) before the meeting convened on his requisition, or
- (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation, 15
- a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (4) The company must (unless the statement is received too late for it to comply) – 20
- (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and
- (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.
- (5) The directors must within 21 days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given. 25
- (6) If default is made in complying with subsection (5), every director who failed to take all reasonable steps to secure that a meeting was convened commits an offence. 30
- (7) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction to a fine not exceeding the statutory maximum.
- (8) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting. 35
- (9) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused. 40
- The court may order the company's costs (in Scotland, expenses) on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

- (10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 494(2) in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b) above.  
In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor. 5

*Statement by auditor on ceasing to hold office*

**510 Statement by auditor to be deposited with company**

- (1) Where an auditor of an unquoted company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company. 10
- (2) If he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, he must deposit at the company's registered office a statement to that effect. 15
- (3) Where an auditor of a quoted company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office. 20
- (4) The statement required by this section must be deposited –
- (a) in the case of resignation, along with the notice of resignation;
  - (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor; 25
  - (c) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
- (5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (6) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence. 30
- (7) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum. 35

**511 Company's duties in relation to statement**

- (1) This section applies where the statement deposited under section 510 states the circumstances connected with the auditor's ceasing to hold office.
- (2) The company must within 14 days of the deposit of the statement either – 40
- (a) send a copy of it to every person who under section 404 is entitled to be sent copies of the accounts, or
  - (b) apply to the court.

- (3) If it applies to the court, the company must notify the auditor of the application.
- (4) If the court is satisfied that the auditor is abusing the rights conferred by section 510—
- (a) it shall direct that copies of the statement need not be sent out, and 5
  - (b) it may further order the company’s costs (in Scotland, expenses) on the application to be paid in whole or in part by the auditor, even if he is not a party to the application.
- The company must within 14 days of the court’s decision send to the persons mentioned in subsection (2)(a) a statement setting out the effect of the order. 10
- (5) If no such direction is made the company must send copies of the statement to the persons mentioned in subsection (2)(a) within 14 days of the court’s decision or, as the case may be, of the discontinuance of the proceedings.
- (6) In the event of default in complying with this section an offence is committed by every officer of the company who is in default. 15
- (7) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine; 20
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

## 512 Copy of statement to be sent to registrar

- (1) Unless within 21 days beginning with the day on which he deposited the statement under section 510 the auditor receives notice of an application to the court under section 511, he must within a further seven days send a copy of the statement to the registrar. 25
- (2) If an application to the court is made under section 511 and the auditor subsequently receives notice under subsection (5) of that section, he must within seven days of receiving the notice send a copy of the statement to the registrar. 30
- (3) An auditor who fails to comply with subsection (1) or (2) commits an offence.
- (4) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence. 35
- (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.

## 513 Copy of statement to be sent to appropriate audit authority 40

- (1) This section applies—
- (a) in the case of a major audit, where an auditor ceases for any reason to hold office;

- (b) in the case of an audit that is not a major audit, where an auditor ceases to hold office before the end of his term of office.
- (2) Where this section applies the auditor and the company must –
- (a) inform the appropriate audit authority, and
  - (b) send to that authority a copy of the statement deposited by him at the company’s registered office in accordance with section 510. 5
- (3) The appropriate audit authority is –
- (a) in the case of a major audit, the Secretary of State or the body to whom the Secretary of State has delegated functions under section 846 or 847;
  - (b) in the case of an audit that is not a major audit, the relevant supervisory body. 10
- (4) If the statement deposited by the auditor at the company’s registered office is to the effect that he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, the copy of that statement sent to the appropriate audit authority must be accompanied by a statement of the reasons for his ceasing to hold office. 15
- (5) The auditor and the company must send the statements required by this section to the appropriate audit authority –
- (a) in the case of a major audit, at the same time he is required to deposit a statement at the company’s registered office in accordance with section 510; 20
  - (b) in the case of an audit that is not a major audit, at such time (not being earlier than the time mentioned in paragraph (a)) as the appropriate audit authority may require. 25
- (6) In this section a “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 30
  - (b) any other company in whose financial condition there is a major public interest.
- In determining whether an audit is a major audit within paragraph (b), regard shall be had to any guidance issued by any of the authorities mentioned in subsection (3). 35
- (7) A person ceasing to hold office as auditor who fails to comply with this section commits an offence.
- (8) If a company fails to comply with subsection (2) or (5), an offence is committed by –
- (a) the company, and 40
  - (b) every officer of the company who is in default.
- (9) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (10) A person guilty of an offence under this section is liable – 45
- (a) on conviction on indictment, to a fine;

- (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### 514 Information to be given to accounting authorities

- (1) The appropriate audit authority under section 513—
- (a) must inform the accounting authorities, and 5
  - (b) may if it thinks fit send to each of those authorities a copy of the statement deposited by the auditor at the company’s registered office in accordance with section 510.
- (2) The accounting authorities are—
- (a) the Secretary of State, and 10
  - (b) any person authorised by the Secretary of State for the purposes of section 439 (revision of defective accounts: persons authorised to apply to court).
- (3) If either of the accounting authorities is also the appropriate audit authority under section 513 it is only necessary to comply with this section as regards any other accounting authority. 15
- (4) If the court has made an order under section 511(4) directing that copies of the statement need not be sent out by the company, sections 443 and 444 (restriction on further disclosure) apply in relation to the copies sent to the accounting authorities as they apply to information obtained under section 442 (power to require documents etc). 20

#### *Supplementary*

#### 515 Effect of casual vacancies

- During a casual vacancy in the office of auditor, any surviving or continuing auditor or auditors may continue to act. 25

### CHAPTER 5

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

#### 516 Members’ power to require website publication of audit concerns

- (1) The members of a quoted company may require the company to publish on a website a statement setting out any matter relating to— 30
- (a) the audit of the company’s accounts (including the auditor’s report and the conduct of the audit) that are to be laid before the next accounts meeting, or
  - (b) any circumstances connected with an auditor of the company ceasing to hold office since the previous accounts meeting, 35
- that the members propose to raise at the next accounts meeting of the company.
- (2) A company is required to do so once it has received requests to that effect from— 40

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

### 517 Requirements as to website availability

- (1) The following provisions apply for the purposes of section 516 (website publication of members’ statement of audit concerns).
- (2) The information must be made available on a website that – 25
- (a) is maintained by or on behalf of the company, and
  - (b) identifies the company in question.
- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on the payment of a fee or otherwise restricted. 30
- (4) The statement –
- (a) must be made available within three working days of the company being required to publish it on a website, and
  - (b) must be kept available until after the meeting to which it relates.
- (5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if – 35
- (a) the information is made available on the website for part of that period, and
  - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid. 40

### 518 Website publication: company’s supplementary duties

- (1) A quoted company must in the notice it gives of the accounts meeting draw attention to –

- (a) the possibility of a statement being placed on a website in pursuance of members' requests under section 516, and
  - (b) the effect of the following provisions of this section.
- (2) A company may not require the members requesting website publication to pay its expenses in complying with that section or section 517 (requirements in connection with website publication). 5
- (3) Where a company is required to place a statement on a website under section 516 it must forward the statement to the company's auditor not later than the time when it makes the statement available on the website.
- (4) The business which may be dealt with at the accounts meeting includes any statement that the company has been required under section 516 to publish on a website. 10

### 519 Website publication: offences

- (1) In the event of default in complying with
- (a) section 517 (requirements as to website publication), or 15
  - (b) section 518 (companies' supplementary duties in relation to request for website publication),
- an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine; 20
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

## CHAPTER 6

### AUDITORS' LIABILITY

*Provisions protecting auditors from liability* 25

### 520 Provisions protecting auditors from liability

- (1) This section applies to any provision –
- (a) for exempting an auditor of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company, or 30
  - (b) by which a company directly or indirectly provides an indemnity (to any extent) for an auditor of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is auditor. 35
- (2) Any such provision is void, except as permitted by –
- (a) section 521 (indemnity for costs of successfully defending proceedings), or
  - (b) sections 522 to 527 (liability limitation agreements). 40



- (3) This section applies to any provision, whether contained in a company’s articles or in any contract with the company or otherwise.
- (4) For the purposes of this section companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

**521 Indemnity for costs of successfully defending proceedings** 5

Section 520 (general voidness of provisions protecting auditors from liability) does not prevent a company from indemnifying an auditor against any liability incurred by him –

- (a) in defending proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or 10
- (b) in connection with an application under section 769 (power of court to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.

*Liability limitation agreements*

**522 Liability limitation agreements** 15

- (1) A “liability limitation agreement” is an agreement that purports to limit the amount of a liability owed to a company by its auditor in respect of any negligence, default, breach of duty or breach of trust, occurring in the course of the audit of accounts for a financial year specified in the agreement, of which the auditor may be guilty in relation to the company. 20
- (2) Section 520 (general voidness of provisions protecting auditors from liability) does not affect the validity of a liability limitation agreement if the agreement has been authorised by the members of the company in accordance with section 523.
- (3) A liability limitation agreement that has been so authorised – 25
  - (a) is effective to the extent provided by section 524, and
  - (b) is not subject –
    - (i) in England and Wales or Northern Ireland, to section 2(2) or 3(2)(a) of the Unfair Contract Terms Act 1977 (c. 50);
    - (ii) in Scotland, to section 16(1)(b) or 17(1)(a) of that Act. 30

**523 Authorisation of agreement by members of the company**

- (1) A liability limitation agreement between a private company and its auditor may be authorised –
  - (a) by the company passing a resolution, before it enters into the agreement, waiving the need for approval, 35
  - (b) by the company passing a resolution, before it enters into the agreement, approving the agreement’s principal terms, or
  - (c) by the company passing a resolution, after it enters into the agreement, approving the agreement.
- (2) A liability limitation agreement between a public company and its auditor may be authorised – 40
  - (a) by the company passing a resolution in general meeting, before it enters into the agreement, approving the agreement’s principal terms, or

<ul style="list-style-type: none"> <li>(b) by the company passing a resolution in general meeting, after it enters into the agreement, approving the agreement.</li> <li>(3) The resolution required is an ordinary resolution, subject to any provision of the company’s articles requiring a higher majority (or unanimity).</li> <li>(4) The “principal terms” of an agreement are terms specifying, or relevant to the determination of – <ul style="list-style-type: none"> <li>(a) the kind (or kinds) of acts or omissions covered,</li> <li>(b) the financial year in relation to which acts or omissions are covered, or</li> <li>(c) the amount to which the auditor’s liability is limited.</li> </ul> </li> </ul>	<p>5</p> <p>5</p>
<b>524 Effect of liability limitation agreement</b>	
<ul style="list-style-type: none"> <li>(1) A liability limitation agreement is not effective to limit the auditor’s liability to less than such amount as is fair and reasonable in all the circumstances of the case having regard to – <ul style="list-style-type: none"> <li>(a) the auditor’s responsibilities under this Part,</li> <li>(b) the nature and purpose of the auditor’s contractual obligations to the company, and</li> <li>(c) the professional standards expected of him.</li> </ul> </li> <li>(2) A liability limitation agreement that purports to limit the auditor’s liability to less than the amount mentioned in subsection (1) shall have effect as if it limited his liability to that amount.</li> </ul>	<p>10</p> <p>15</p> <p>20</p>
<b>525 Disclosure of agreement by company</b>	
<ul style="list-style-type: none"> <li>(1) A company which has entered into a liability limitation agreement must make such disclosure in connection with the agreement as the Secretary of State may require by regulations.</li> <li>(2) The regulations may provide, in particular, that any disclosure required by the regulations shall be made – <ul style="list-style-type: none"> <li>(a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts), or</li> <li>(b) in the directors’ report.</li> </ul> </li> <li>(3) Regulations under this section are subject to negative resolution procedure.</li> </ul>	<p>25</p> <p>30</p>
<b>526 Exclusion of agreements for more than one year</b>	
<p>A liability limitation agreement is of no effect if it purports to apply in respect of acts or omissions occurring in the course of the audit of accounts for more than one financial year.</p>	<p>35</p>
<b>527 Termination of agreement by members of company</b>	
<ul style="list-style-type: none"> <li>(1) The members of a company may by ordinary resolution terminate the effect of a liability limitation agreement in respect of an act or omission occurring after a date specified in the resolution.</li> <li>(2) A resolution under this section may be passed –</li> </ul>	<p>40</p>

- (a) at the same time as a resolution under section 523 authorising the agreement is passed, or
  - (b) at any time after such a resolution has been passed.
- (3) A resolution under this section does not affect the operation of the agreement in relation to an act or omission occurring – 5
- (a) on or before the date on which the resolution is passed, or
  - (b) after the beginning of the financial year to which the agreement relates.
- (4) This section has effect notwithstanding anything in the agreement.

## CHAPTER 7

### SUPPLEMENTARY PROVISIONS 10

#### 528 Minor definitions

- (1) In this Part –
- “insurance market activity” has the meaning given in section 316(3) of the Financial Services and Markets Act 2000 (c. 8);
  - “qualified”, in relation to an auditor’s report (or a statement contained in an auditor’s report), means that the report or statement does not state the auditor’s unqualified opinion that the accounts have been properly prepared in accordance with this Act or, in the case of an undertaking not required to prepare accounts in accordance with this Act, under any corresponding legislation under which it is required to prepare accounts; 20
  - “regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000, except that it does not include activities of the kind specified in any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 – 25
    - (a) article 25A (arranging regulated mortgage contracts),
    - (b) article 39A (assisting administration and performance of a contract of insurance),
    - (c) article 53A (advising on regulated mortgage contracts), or
    - (d) article 21 (dealing as agent), article 25 (arranging deals in investments) or article 53 (advising on investments) where the activity concerns relevant investments that are not contractually based investments (within the meaning of article 3 of that Order); 30
  - “turnover”, in relation to a company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of – 35
    - (a) trade discounts,
    - (b) value added tax, and
    - (c) any other taxes based on the amounts so derived. 40
- (2) In the case of an undertaking not trading for profit, any reference in this Part to a profit and loss account is to an income and expenditure account. References to profit and loss and, in relation to group accounts, to a consolidated profit and loss account shall be construed accordingly.

## PART 17

### PRIVATE AND PUBLIC COMPANIES

#### CHAPTER 1

##### PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

- |            |   |    |
|------------|---|----|
| <b>529</b> | <b>Prohibition of public offers by private company</b>  | 5  |
| (1)        | A private company limited by shares or limited by guarantee and having a share capital must not –   |    |
|            | (a) offer to the public any securities of the company, or   |    |
|            | (b) allot or agree to allot any securities of the company with a view to their being offered to the public.   | 10 |
| (2)        | Unless the contrary is proved, an allotment or agreement to allot securities is presumed to be made with a view to their being offered to the public if an offer of the securities (or any of them) to the public is made – |    |
|            | (a) within six months after the allotment or agreement to allot, or   |    |
|            | (b) before the receipt by the company of the whole of the consideration to be received by it in respect of the securities.  | 15 |
| (3)        | A company does not contravene this section if –   |    |
|            | (a) it acts in good faith in pursuance of arrangements under which it is to re-register as a public company before the securities are allotted, or  |    |
|            | (b) as part of the terms of the offer it undertakes to re-register as a public company within a specified period, and that undertaking is complied with.  | 20 |
| (4)        | The specified period for the purposes of subsection (3)(b) must be a period ending not later than six months after the day on which the offer is made (or, in the case of an offer made on different days, first made).     | 25 |
| (5)        | In this section the references to an offer to the public are to be read in accordance with section 530.   |    |
| (6)        | In this Chapter “securities” means shares or debentures.  |    |
| <b>530</b> | <b>Meaning of “offer to the public”</b>   |    |
| (1)        | This section explains what is meant in section 529 (restriction on public offers by private companies) by an offer of securities to the public.   | 30 |
| (2)        | An offer to the public includes an offer to any section of the public, however selected.  |    |
| (3)        | An offer is not regarded as an offer to the public if it can properly be regarded, in all the circumstances, as –   | 35 |
|            | (a) not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer, or   |    |
|            | (b) otherwise being a private concern of the person receiving it and the person making it.  | 40 |
| (4)        | An offer is not regarded as an offer to the public if –   |    |

- (a) it is made only to persons already connected with the company,
  - (b) if it is made on terms allowing the person to whom it is made to renounce his rights, they may only be renounced in favour of another person so connected, and
  - (c) it cannot properly be regarded, in all the circumstances, as being calculated to result, directly or indirectly, in securities of the company becoming available to persons not already connected with the company. 5
- (5) An offer is not regarded as an offer to the public if – 10
- (a) it is an offer to subscribe for securities to be held under an employees’ share scheme,
  - (b) if it is made on terms allowing the person to whom it is made to renounce his rights, they may only be renounced in favour of –
    - (i) another person entitled to hold securities under the scheme, or
    - (ii) a person already connected with the company, and 15
  - (c) it cannot properly be regarded, in all the circumstances, as being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than –
    - (i) persons entitled to hold securities under the scheme, or
    - (ii) persons already connected with the company. 20
- (6) For the purposes of this section “person already connected with the company” means –
- (a) an existing member or employee of the company,
  - (b) a member of the family of a person who is or was a member or employee of the company, 25
  - (c) the widow or widower, or surviving civil partner, of a person who was a member or employee of the company,
  - (d) an existing debenture holder of the company, or
  - (e) a trustee (acting in his capacity as such) of a trust of which the principal beneficiary is a person within any of paragraphs (a) to (d). 30
- (7) For the purposes of subsection (6)(b) the members of a person’s family are the person’s spouse or civil partner and children (including step-children) and their descendants.

### **531 Enforcement of prohibition: order restraining proposed contravention**

- (1) If it appears to the court – 35
- (a) on an application under this section, or
  - (b) in proceedings under section 459 or 460 of the Companies Act 1985 (c. 6) (protection of members against unfair prejudice),
- that a company is proposing to act in contravention of section 529 (prohibition of public offers by private companies), the court shall make an order under this section. 40
- (2) An order under this section is an order restraining the company from contravening that section.
- (3) An application for an order under this section may be made by –
- (a) a member or creditor of the company, or 45
  - (b) the Secretary of State.

**532 Enforcement of prohibition: order for re-registration or winding up**

- (1) If it appears to the court –
- (a) on an application under this section, or
  - (b) in proceedings under section 459 or 460 of the Companies Act 1985 (c. 6) (protection of members against unfair prejudice),
- 5
- that a company has acted in contravention of section 529 (prohibition of public offers by private companies), the court shall make an order under this section.
- (2) An order under this section may be –
- (a) an order requiring the company to re-register as a public company, or
  - (b) an order for the compulsory winding up of the company.
- 10
- (3) The court must make an order for re-registration (rather than winding up) unless it appears to the court –
- (a) that the company does not meet the requirements for re-registration as a public company, and
  - (b) that it is impractical or undesirable to require it to take steps to do so.
- 15
- (4) An application under this section may be made by –
- (a) a member of the company who –
    - (i) was a member at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
    - (ii) became a member as a result of the offer,
  - (b) a creditor of the company who was a creditor at the time the offer was made (or, if the offer was made over a period, at any time during that period), or
  - (c) the Secretary of State.
- 20

**533 Validity of allotment etc not affected** 25

Nothing in this Chapter affects the validity of any allotment or sale of securities or of any agreement to allot or sell securities.

**CHAPTER 2**

MINIMUM SHARE CAPITAL REQUIREMENT FOR PUBLIC COMPANIES

**534 Public company: requirement as to minimum share capital** 30

- (1) A company that is a public company (otherwise than by virtue of re-registration as a public company) must not do business or exercise any borrowing powers unless the registrar has issued it with a certificate under this section (a “trading certificate”).
- (2) The registrar shall issue a trading certificate if, on an application made in accordance with section 535, he is satisfied that the nominal value of the company’s allotted share capital is not less than the authorised minimum. 35
- (3) For this purpose a share allotted in pursuance of an employees’ share scheme shall not be taken into account unless paid up as to –
- (a) at least one-quarter of the nominal value of the share, and
  - (b) the whole of any premium on the share.
- 40

- (4) A trading certificate has effect from the date on which it is issued and is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

### **535 Procedure for obtaining certificate**

- (1) An application for a certificate under section 534 must – 5
- (a) state that the nominal value of the company's allotted share capital is not less than the authorised minimum,
  - (b) specify the amount, or estimated amount, of the company's preliminary expenses,
  - (c) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit, and 10
  - (d) be accompanied by a statement of compliance.
- (2) The statement of compliance is a statement that the company meets the requirements for the issue of a certificate under section 534. 15
- (3) The registrar may accept the statement of compliance as sufficient evidence of the matters stated in it.

### **536 The authorised minimum**

For the purposes of sections 534 and 535 (requirement as to minimum share capital of public company) the authorised minimum is £50,000. 20

### **537 Consequences of doing business etc without a trading certificate**

- (1) If a company does business or exercises any borrowing powers in contravention of section 534, 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 subsection (1) is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (3) A contravention of section 534 does not affect the validity of a transaction entered into by the company, but if a company – 30
- (a) enters into a transaction in contravention of that section, and
  - (b) fails to comply with its obligations in connection with the transaction within 21 days from being called on to do so,
- the directors of the company are jointly and severally liable to indemnify any other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with its obligations. 35
- (4) The directors who are so liable are those who were directors at the time the company entered into the transaction.

**PART 18**

## ALLOTMENT OF SHARES

*Power of directors to allot shares***538 Exercise by directors of power to allot shares etc**

- (1) The directors of a company must not exercise any power of the company – 5
- (a) to allot shares in the company, or
- (b) to grant rights to subscribe for, or to convert any security into, shares in the company,
- except in accordance with section 539 (private company with single class of shares) or section 540 (authorisation by company). 10
- (2) Subsection (1) does not apply –
- (a) to the allotment of shares in pursuance of an employees’ share scheme, or
- (b) to the grant of a right to subscribe for, or to convert any security into, shares so allotted. 15
- (3) Where this section applies in relation to the grant of a right to subscribe for, or to convert any security into, shares, it does not apply in relation to the allotment of shares pursuant to that right.
- (4) This section does not apply to shares taken by the subscribers to the company’s memorandum on the formation of the company. 20
- (5) A director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this section commits an offence.
- (6) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum. 25
- (7) Nothing in this section affects the validity of an allotment or other transaction.

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

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

**540 Power of directors to allot shares etc: authorisation by company**

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



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

*Public companies: allotment where issue not fully subscribed*

#### **541 Public companies: allotment where issue not fully subscribed**

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

- 
- (b) the offer is made on terms that the number of shares subscribed for may be allotted in any event, or
  - (c) the offer is made on terms that the number of shares subscribed for may be allotted if specified conditions are met, and those conditions are met.
- (2) If shares are prohibited from being allotted by subsection (1) and 40 days have elapsed after the first making of the offer, all money received from applicants for shares must be repaid to them forthwith, without interest. 5
- (3) If any of the money is not repaid within 48 days after the making of the offer, the directors of the company are jointly and severally liable to repay it, with interest at the rate for the time being specified under section 17 of the Judgments Act 1838 (c. 110) from the expiration of the 48th day. 10  
A director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (4) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription, with the following adaptations – 15
- (a) the references in subsection (1) to subscription shall be construed accordingly;
  - (b) in subsections (2) and (3) references to the repayment of money received from applicants for shares include – 20
    - (i) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or
    - (ii) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received; 25
  - (c) any reference in those subsections to interest applies accordingly.
- (5) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.
- 542 Effect of allotment in contravention of section 541 30**
- (1) An allotment made by a company to an applicant in contravention of section 541 (public companies: allotment where issue not fully subscribed) is voidable at the instance of the applicant within one month after the date of the allotment, and not later.
- (2) It is so voidable even if the company is in the course of being wound up. 35
- (3) If a director of a company knowingly permits or authorises the contravention of section 541 with respect to an allotment, he is liable to compensate the company and the allottee respectively for any loss, damages, costs or expenses that the company or allottee may have sustained or incurred by the contravention. 40
- (4) Proceedings to recover any such loss, damages, costs or expenses may not be brought more than two years after the date of the allotment.

*Return of allotments*

**543 Return of allotment by limited company**

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

**544 Return of allotment of new class of shares by unlimited company**

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

**545 Offence of failure to make return** 30

- (1) If a company makes default in complying with –
  - section 543 (return of allotment of shares by limited company), or
  - section 544 (return of allotment of new class of shares by unlimited company),an offence is committed by every officer of the company who is in default. 35
- (2) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum. 40
- (3) In the case of default in delivering to the registrar within one month after the allotment the return required by section 543 or 544 –

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

5

*Time for accepting pre-emption offer*

**546 Time for acceptance of pre-emption offers**

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

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

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

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

*Disapplication of pre-emption rights*

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

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

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

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

- (1) Where the directors of a company are generally authorised for the purposes of section 540, they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authority as if section 89(1) of the Companies Act 1985 (offers to shareholders to be on pre-emptive basis) –
  - (a) did not apply to the allotment, or
  - (b) applied to the allotment with such modifications as the directors may determine.

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- (2) Where the directors make an allotment under this section, sections 89 to 94 of that Act (pre-emption rights) have effect accordingly.
- (3) The power conferred by this section ceases to have effect when the authority to which it relates –
- (a) is revoked or 5
  - (b) would (if not renewed) expire.
- But if the authority is renewed the power may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.
- (4) Notwithstanding that the power conferred by this section has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the power enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired. 10
- 549 Disapplication of pre-emption rights by special resolution 15**
- (1) Where the directors of a company are authorised for the purposes of section 540 (whether generally or otherwise), the company may by special resolution resolve that section 89(1) of the Companies Act 1985 (c. 6) (offers to shareholders to be on pre-emptive basis) –
- (a) shall not apply to a specified allotment of equity securities to be made pursuant to that authority, or 20
  - (b) shall apply to the allotment with such modifications as may be specified in the resolution.
- (2) Where such a resolution is passed sections 89 to 94 of that Act (pre-emption rights) have effect accordingly. 25
- (3) A special resolution under this section ceases to have effect when the authority to which it relates –
- (a) is revoked or
  - (b) would (if not renewed) expire.
- But if the authority is renewed the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company. 30
- (4) Notwithstanding that any such resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the resolution enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired. 35
- (5) A special resolution under this section, or a special resolution to renew such a resolution, must not be proposed unless –
- (a) it is recommended by the directors, and
  - (b) the directors have complied with subsections (6) and (7). 40
- (6) Before such a resolution is proposed, the directors must make a written statement setting out –
- (a) their reasons for making the recommendation,
  - (b) the amount to be paid to the company in respect of the equity securities to be allotted, and 45
  - (c) the directors' justification of that amount.

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

#### 550 Liability for false statement in directors' statement

- (1) This section applies in relation to a statement sent, submitted or circulated under section 549(7) (directors' statement on resolution disapplying pre-emption rights). 10
- (2) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both); 15
  - (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); 20
    - (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).

#### 551 Disapplication of pre-emption rights: sale of treasury shares

- (1) This section applies in relation to a sale of shares that is an allotment of equity securities by virtue of section 94(3A) of the Companies Act 1985 (c. 6) (sale of shares held by company as treasury shares). 25
- (2) The directors of a company may be given power by the articles, or by a special resolution of the company, to allot equity securities as if section 89(1) of the Companies Act 1985 (offers to shareholders to be on pre-emptive basis)— 30
- (a) did not apply to the allotment, or
  - (b) applied to the allotment with such modifications as the directors may determine.
- (3) The provisions of section 548(2) and (4) apply in that case as they apply to a case within subsection (1) of that section. 35
- (4) The company may by special resolution resolve that section 89(1) of the Companies Act 1985 (offers to shareholders to be on pre-emptive basis)—
- (a) shall not apply to a specified allotment of securities, or
  - (b) shall apply to the allotment with such modifications as may be specified in the resolution. 40
- (5) The provisions of section 549(2) and (4) to (7) apply in that case as they apply to a case within subsection (1) of that section.

*Commissions, discounts and allowances*

**552 Commissions, discounts and allowances**

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

**PART 19** 30

SHARE CAPITAL

*Share capital and how it may be altered*

**553 Shares of limited companies to have fixed nominal value**

- (1) Shares in a limited company having a share capital must each have a fixed nominal value. 35
- (2) An allotment of a share that does not have a fixed nominal value is void.
- (3) Shares in a limited company having a share capital may be denominated in any currency, and different classes of shares may be denominated in different currencies.
- (4) If a company purports to allot shares in contravention of this section, an offence is committed by every officer of the company who is in default. 40

- (5) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

**554 Alteration of share capital of limited company** 5

- (1) A limited company having a share capital may not alter its share capital except in the following ways.
- (2) The company may –
  - (a) increase its share capital by allotting new shares in accordance with Part 18 of this Act and Part 4 of the Companies Act 1985 (c. 6), or 10
  - (b) reduce its share capital in accordance with Chapter 4 of Part 5 of that Act.
- (3) The company may –
  - (a) sub-divide or consolidate all or any of its share capital in accordance with section 555 of this Act, or 15
  - (b) reconvert stock into shares in accordance with section 557 of this Act.
- (4) The company may redenominate all or any of its shares in accordance with section 583 of this Act and may reduce its share capital in accordance with section 587 of this Act in connection with such a redenomination.
- (5) Nothing in this section affects – 20
  - (a) the power of a company to redeem shares, or to purchase its own shares, in accordance with Chapter 7 of Part 5 of the Companies Act 1985,
  - (b) the power of a company to purchase shares in pursuance of an order of the court under – 25
    - (i) section 98 of this Act (litigated objection to resolution for company to be re-registered as private),
    - (ii) section 177 of the Companies Act 1985 (powers of court on objection to certain payments out of capital), or
    - (iii) Part 17 of the Companies Act 1985 (relief to members unfairly prejudiced), 30
  - (c) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the articles, for failure to pay any sum payable in respect of the shares,
  - (d) the cancellation of shares under section 146(2) of the Companies Act 1985 (treatment of shares held by or for a public company), or 35
  - (e) the power of a company –
    - (i) to enter into a compromise or arrangement in accordance with section 425 of the Companies Act 1985, or
    - (ii) to do anything required to comply with an order of the court on an application under that section. 40

**555 Sub-division or consolidation of shares**

- (1) A limited company having a share capital may –
  - (a) sub-divide its shares, or any of them, into shares of a smaller nominal amount than its existing shares, or 45



- (b) consolidate and divide all or any of its share capital into shares of a larger nominal amount than its existing shares.
  - (2) In any sub-division, consolidation or division of shares under this section, the proportion between the amount paid and the amount (if any) unpaid on each resulting share must be the same as it was in the case of the share from which that share is derived. 5
  - (3) A company may exercise a power conferred by this section only if its members have passed an ordinary resolution authorising it to do so.
  - (4) A resolution under subsection (3) may authorise a company – 10
    - (a) to exercise more than one of the powers conferred by this section;
    - (b) to exercise a power on more than one occasion;
    - (c) to exercise a power at a specified time or in specified circumstances.
  - (5) The company’s articles may exclude or restrict the exercise of any power conferred by this section.
- 556 Notice to registrar of sub-division or consolidation 15**
- (1) If a company exercises a power conferred by section 555 (sub-division or consolidation of shares) it must within one month after doing so give notice to the registrar, specifying the shares affected.
  - (2) The notice must be accompanied by a statement of capital.
  - (3) The statement of capital must state with respect to the company’s share capital immediately following the exercise of the power – 20
    - (a) the total number of shares of the company,
    - (b) the aggregate nominal value of those shares,
    - (c) for each class of shares –
      - (i) prescribed particulars of the rights attached to the shares, 25
      - (ii) the total number of shares of that class, and
      - (iii) the aggregate nominal value of shares of that class, and
    - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium). 30
  - (4) If default is made in complying with this section, an offence is committed by –
    - (a) the company, and
    - (b) every officer of the company who is in default.
  - (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 35
- 557 Re-conversion of stock into shares**
- (1) A company that has converted paid-up shares into stock (before the repeal by this Act of the power to do so) may re-convert that stock into paid-up shares of any nominal value. 40
  - (2) A company may exercise the power conferred by this section only if its members have passed an ordinary resolution authorising it to do so.

- (3) A resolution under subsection (2) may authorise a company to exercise the power conferred by this section –
- (a) on more than one occasion;
  - (b) at a specified time or in specified circumstances.
- (4) If a company exercises the power conferred by this section it must, within one month after doing so, give notice to the registrar specifying the stock affected. 5
- (5) The notice must be accompanied by a statement of capital.
- (6) The statement of capital must state with respect to the company’s share capital immediately following the reconversion –
- (a) the total number of shares of the company, 10
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and 15
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (7) If a company makes default in complying with subsection (4) or (5), an offence is committed by – 20
- (a) the company, and
  - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 25

#### 558 Notice to registrar of alteration of share capital

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

- “(1A) The notice must be accompanied by a statement of capital. 30
- (1B) The statement of capital must state with respect to the company’s share capital immediately following the redemption or cancellation –
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares – 35
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).” 40

*Reserve capital*

**559 Abolition of reserve capital**

- (1) Section 120 of the Companies Act 1985 (c. 6) (reserve liability of limited company) shall cease to have effect.
- (2) Section 124 of that Act (reserve capital of unlimited company) shall cease to have effect. 5
- (3) The repeals made by this section do not affect the validity of –
  - (a) a special resolution passed by a company under section 120 of the Companies Act 1985 before the date on which this section came into force, provided that the resolution is forwarded to the registrar in accordance with section 380 of that Act or Chapter 3 of Part 3 of this Act, or 10
  - (b) the exercise of either of the powers under section 124 of the Companies Act 1985 before that date.

*Class rights* 15

**560 Variation of class rights: companies having a share capital**

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

**“125 Variation of class rights: companies having a share capital**

- (1) This section is concerned with the variation of the rights attached to a class of shares in a company having a share capital. 20
- (2) Rights attached to a class of a company’s shares may be varied if, and only if, the holders of shares of that class consent to the variation in accordance with this section.
- (3) This is without prejudice to any other restrictions on the variation of the rights. 25
- (4) The consent required for the purposes of this section on the part of the holders of a class of a company’s shares is –
  - (a) consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class (excluding any shares held as treasury shares), or 30
  - (b) a special resolution passed at a separate general meeting of the holders of that class sanctioning the variation.
- (5) Any alteration of a provision contained in a company’s articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights. 35
- (6) In this section, and (except where the context otherwise requires) in any provision in a company’s articles for the variation of the rights attached to a class of shares, references to the variation of those rights include references to their abrogation.”. 40

**561 Variation of class rights: companies without a share capital**

After section 125 of the Companies Act 1985 (c. 6) (variation of class rights: companies having a share capital) (inserted by section 560 above) insert –

**“125A Variation of class rights: companies without a share capital**

- |     |  |    |
|-----|--|----|
| (1) | This section is concerned with the variation of the rights of a class of members of a company where the company does not have a share capital.   | 5  |
| (2) | Rights of a class of members may be varied if, and only if, the members of that class consent to the variation in accordance with this section.  |    |
| (3) | This is without prejudice to any other restrictions on the variation of the rights.  | 10 |
| (4) | The consent required for the purposes of this section on the part of the members of a class is –   |    |
|     | (a) consent in writing from at least three-quarters of the members of the class, or  | 15 |
|     | (b) a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.  |    |
| (5) | Any alteration of a provision contained in a company’s articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.                 | 20 |
| (6) | In this section, and (except where the context otherwise requires) in any provision in a company’s articles for the variation of the rights of a class of members, references to the variation of those rights include references to their abrogation.”. | 25 |

**562 Variation of class rights: saving for court’s powers under other provisions**

For section 126 of the Companies Act 1985 substitute –

**“126 Saving for court’s powers under other provisions**

- |  |    |
|--|----|
| Nothing in section 125 or 125A (variation of class rights) affects the power of the court under –                            | 30 |
| section 425 (court control of company compromising with members and creditors);  |    |
| section 427 (company reconstruction or amalgamation);  |    |
| sections 459 to 461 (protection of minorities);  |    |
| section 98 of the Company Law Reform Act 2006 (litigated objection to public company becoming private by re-registration).”. | 35 |

**563 Variation of class rights: right to object to variation**

- |     |  |    |
|-----|--|----|
| (1) | For the heading to section 127 of the Companies Act 1985 (shareholders’ right to object to variation) substitute “Right to object to variation: companies having a share capital”. | 40 |
|-----|--|----|

- 
- (2) For subsection (1) of that section substitute –
- “(1) This section applies where the rights attached to any class of shares in a company are varied under section 125 (variation of class rights: companies having a share capital).”.
- (3) Omit subsection (5) of that section. 5
- (4) After that section insert –
- “127A Right to object to variation: companies without a share capital**
- (1) This section applies where the rights of any class of members of a company are varied under section 125A (variation of class rights: companies without a share capital). 10
- (2) Members amounting to not less than 15% of the members of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled.
- If such an application is made, the variation has no effect unless and until it is confirmed by the court. 15
- (3) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be) and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose. 20
- (4) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and shall if not satisfied confirm it. 25
- The decision of the court on any such application is final.
- (5) References in this section to the variation of the rights of a class of members include references to their abrogation. 30
- 127B Copy of court order to be forwarded to the registrar**
- (1) The company shall within 15 days after the making of an order by the court on an application under section 127 or 127A (objection to variation of class rights) forward a copy of the order to the registrar.
- (2) If default is made in complying with this section an offence is committed by – 35
- (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.”. 40

**564 Registration of class rights**

- (1) In section 128 of the Companies Act 1985 (c. 6) (registration of particulars of special rights) –
- (a) in subsection (3) (notification of variation of class rights), omit from “otherwise than” to “section 380”; 5
  - (b) in subsection (4) omit from “(otherwise than” to “above)”.
- (2) In section 129 of the Companies Act 1985 (registration of newly created class rights of company without share capital) –
- (a) in subsection (1) (notification of new class of members) –
    - (i) for “a class of members” substitute “a new class of members”, 10  
and
    - (ii) omit from “with rights which” to “section 380 applies”;
  - (b) in subsection (2) (notification of variation of class rights), omit from “otherwise than” to “section 380”;
  - (c) in subsection (3) (notification of variation of name or designation of class) omit from “(otherwise than” to “above)”. 15

*Share premiums***565 Application of share premiums**

- (1) In section 130 of the Companies Act 1985 (application of share premiums) for subsection (2) substitute – 20
- “(1A) Where, on issuing shares, a company has transferred a sum to the share premium account, it may use that sum to write off –
- (a) the expenses of the issue of those shares;
  - (b) any commission paid on the issue of those shares.
- (2) The company may use the share premium account to pay up new shares to be allotted to members as fully paid bonus shares.”. 25
- (2) In subsection (3) of that section for “this” substitute “subsections (1A) and (2)”.

*Reduction of share capital***566 Circumstances in which companies may reduce share capital**

- (1) Before section 135 of the Companies Act 1985 (special resolution for reduction of share capital) insert – 30
- “*Circumstances in which limited companies may reduce share capital*”.
- (2) Section 135 (special resolution for reduction of share capital) is amended as follows.
- (3) For subsection (1) substitute – 35
- “(1) A private company limited by shares may reduce its share capital by special resolution if the resolution is supported by a solvency statement in accordance with section 135A.

- (1A) Any limited company may reduce its share capital by special resolution if the reduction is confirmed by the court in accordance with sections 136 to 139.
- (1B) A company may reduce its share capital under this section in any way, provided that as a result of the reduction at least one member of the company would hold shares other than redeemable shares or shares held as treasury shares.”. 5
- (4) In subsection (2) –  
(a) for “subsection (1)” substitute “subsection (1B)”;  
(b) omit the words following paragraph (c). 10
- (5) After subsection (2) insert –  
“(2A) A special resolution under this section may not provide for a reduction of share capital to take effect later than the date on which the resolution has effect in accordance with this Chapter.  
(2B) This Chapter (apart from subsection (2A)) has effect subject to any provision of the company’s articles restricting or prohibiting the reduction of the company’s share capital.”. 15

## 567 Reduction of capital supported by solvency statement

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

*“Reduction of capital of private company supported by solvency statement”* 20

### 135A Requirement for solvency statement

- (1) A resolution for reducing share capital of a private company limited by shares is supported by a solvency statement if –  
(a) the directors of the company make a statement of the solvency of the company in accordance with section 135B (a “solvency statement”) not more than 15 days before the date on which the resolution is passed, and  
(b) the resolution and solvency statement are registered in accordance with section 135C. 25
- (2) Where the resolution is proposed as a written resolution, a copy of the solvency statement must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him. 30
- (3) Where the resolution is proposed at a general meeting, a copy of the solvency statement must be made available for inspection by members of the company throughout that meeting. 35
- (4) The validity of a resolution is not affected by a failure to comply with subsection (2) or (3).

### 135B Solvency statement

- (1) A solvency statement is a statement that each of the directors –  
(a) has formed the opinion, as regards the company’s situation at the date of the statement, that there is no ground on which the 40

- company could then be found to be unable to pay (or otherwise discharge) its debts; and
- (b) has also formed the opinion –
- (i) if it is intended to commence the winding up of the company within twelve months of that date, that the company will be able to pay (or otherwise discharge) its debts in full within twelve months of the commencement of the winding up; or 5
- (ii) in any other case, that the company will be able to pay (or otherwise discharge) its debts as they fall due during the year immediately following that date. 10
- (2) In forming those opinions, the directors must take into account all of the company’s liabilities (including any contingent or prospective liabilities).
- (3) The solvency statement must state – 15
- (a) the date on which it is made, and
- (b) the name of each director of the company.
- (4) If the directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and the statement is delivered to the registrar, an offence is committed by every director who is in default. 20
- (5) A person guilty of an offence under subsection (4) is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction – 25
- (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). 30

### 135C Registration of resolution and supporting documents

- (1) Within 15 days after the resolution for reducing share capital is passed the company must deliver to the registrar – 35
- (a) a copy of the solvency statement, and
- (b) a statement of capital.
- This is in addition to the copy of the resolution itself that is required to be delivered to the registrar under Chapter 3 of Part 3 of the Company Law Reform Act 2006.
- (2) The statement of capital must state with respect to the company’s share capital as reduced by the resolution – 40
- (a) the total number of shares of the company,
- (b) the aggregate nominal value of those shares,
- (c) for each class of shares – 45
- (i) prescribed particulars of the rights attached to the shares,
- (ii) the total number of shares of that class, and



- (iii) the aggregate nominal value of shares of that class, and
    - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (3) The registrar must register the documents delivered to him under subsection (1) on receipt. 5
- (4) The resolution does not take effect until those documents are registered.
- (5) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the solvency statement was – 10
  - (a) made not more than 15 days before the date on which the resolution was passed, and
  - (b) provided to members in accordance with section 135A(2) or (3).
- (6) The validity of a resolution is not affected by – 15
  - (a) a failure to deliver the documents required to be delivered to the registrar under subsection (1) to the registrar within the time specified in that subsection, or
  - (b) a failure to comply with subsection (5).
- (7) If the company delivers to the registrar a solvency statement that was not provided to members in accordance with section 135A(2) or (3), an offence is committed by every officer of the company who is in default. 20
- (8) If the company fails to comply with this section, an offence is committed by –
  - (a) the company, and 25
  - (b) every officer of the company who is in default.
- (9) A person guilty of an offence under subsection (7) or (8) is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum. 30

*Reduction of capital confirmed by court”.*

#### **568 Registration of court order**

- (1) Section 138 of the Companies Act 1985 (c. 6) (registration of order and minute of reduction) is amended as follows.
- (2) In the section heading for “minute of reduction” substitute “statement of capital”. 35
- (3) In subsection (1) for the words “minute (approved by the court)” to the end substitute “a statement of capital (approved by the court) shall register the order and statement (but subject to section 139).”.
- (4) After that subsection insert – 40
  - “(1A) The statement of capital must state with respect to the company’s share capital as altered by the order –

- (a) the total number of shares of the company,  
 (b) the aggregate nominal value of those shares,  
 (c) for each class of shares—  
     (i) prescribed particulars of the rights attached to the shares, 5  
     (ii) the total number of shares of that class, and  
     (iii) the aggregate nominal value of shares of that class, and  
 (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).” 10
- (5) For subsection (2) substitute—  
 “(2) The resolution for reducing share capital as confirmed by the order registered under subsection (1) takes effect on the registration of the order and statement of capital.  
 This is subject to subsection (2A). 15
- (2A) In the case of a reduction of share capital that forms part of a compromise or arrangement sanctioned by the court under section 425 (power of company to compromise with creditors and members), the resolution for reducing share capital as confirmed by the order registered under subsection (1) takes effect— 20  
 (a) on delivery of the order and statement of capital to the registrar, or  
 (b) if the court so orders, on the registration of the order and statement.”
- (6) In subsection (4) for “minute”, in both places where it occurs, substitute “statement of capital”. 25
- (7) Omit subsections (5) and (6).

### 569 Liability of members on reduced shares

- (1) After section 139 of the Companies Act 1985 (c. 6) insert—  
     “*Supplementary*”. 30
- (2) In section 140 of the Companies Act 1985 (liability of members on reduced shares)—  
 (a) in subsection (1) for “as fixed by the minute” substitute “as notified to the registrar in accordance with section 135C(1) or 138(1)”,  
 (b) in subsection (2) after “if” insert “a reduction of capital is confirmed by the court and”, and 35  
 (c) in subsection (3) for “minute” substitute “statement of capital”.

### *Financial assistance*

### 570 Financial assistance by company for acquisition of shares

- (1) Chapter 6 of Part 5 of the Companies Act 1985 (financial assistance by a company for acquisition of its own shares) is amended as follows. 40

- (2) For section 151 (financial assistance generally prohibited) substitute—

**“151 Prohibited financial assistance: acquisition of shares in public company**

- (1) Where a person is acquiring or proposing to acquire shares in a public company, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place. 5
- (2) Where—
- (a) a person has acquired shares in a company (“the company”), and 10
  - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,
- it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company is a public company. 15
- (3) Subsections (1) and (2) have effect subject to section 153 (transactions not prohibited).
- (4) If a company contravenes this section an offence is committed by—
- (a) the company, and 20
  - (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— 25
    - (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 30 the statutory maximum (or both).

**151A Prohibited financial assistance: acquisition of shares in private company**

- (1) Where a person is acquiring or proposing to acquire shares in a private company, it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place. 35
- (2) Where—
- (a) a person has acquired shares in a private company, and 40
  - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,
- it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability. 45

- (3) Subsections (1) and (2) have effect subject to section 153 (transactions not prohibited).
- (4) If a company contravenes this section an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default. 5
- (5) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 10
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).” 15
- (3) Sections 155 to 158 (relaxation of prohibitions for private companies) shall cease to have effect.

#### 571 Circumstances in which financial assistance is not prohibited

- (1) Section 153 of the Companies Act 1985 (c. 6) (transactions not prohibited by section 151) is amended as follows. 20
- (2) In the heading for “s 151” substitute “this Chapter”.
- (3) After subsection (2) insert –
- “(2A) Section 151A(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in its holding company if – 25
- (a) the company’s principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and
  - (b) the assistance is given in good faith in the interests of the company. 30
- (2B) Section 151A(2) does not prohibit a company from giving financial assistance if –
- (a) the company’s principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and 35
  - (b) the assistance is given in good faith in the interests of the company.” 40
- (4) In subsection (3) for “Section 151 does not prohibit” substitute “Neither section 151 nor section 151A prohibits”.
- (5) In subsection (4) for “Section 151 does not prohibit” substitute “Neither section 151 nor section 151A prohibits”.

*Redeemable shares*

**572 Redeemable shares**

For sections 159 to 160 of the Companies Act 1985 (c. 6) (redeemable shares) substitute –

**“159 Power to issue redeemable shares** 5

- (1) A limited company having a share capital may issue shares that are to be redeemed or are liable to be redeemed at the option of the company or the shareholder (“redeemable shares”), subject to the following provisions.
- (2) The articles of a private limited company may exclude or restrict the issue of redeemable shares. 10
- (3) A public limited company may only issue redeemable shares if it is authorised to do so by its articles.
- (4) No redeemable shares may be issued at a time when there are no issued shares of the company that are not redeemable. 15

**159A Terms and manner of redemption**

- (1) The directors of a limited company may determine the terms, conditions and manner of redemption of shares if they are authorised to do so –
  - (a) by a resolution of the company, or 20
  - (b) by the company’s articles.
- (2) A resolution giving authority under this section may be an ordinary resolution, even though it alters the company’s articles.
- (3) Where the directors are authorised to determine the terms, conditions or manner of redemption of shares, they must do so before the shares are allotted. 25
- (4) Any obligation of the company to state in a statement of capital the rights attached to shares extends, in the case of redeemable shares, to the terms and manner of redemption.

**159B Payment for redeemable shares** 30

- (1) Redeemable shares in a limited company may not be redeemed unless they are fully paid.
- (2) The terms of redemption of shares in a limited company may provide that the amount payable on redemption may, by agreement between the company and the holder of the shares, be paid on a date later than the redemption date. 35
- (3) Unless redeemed in accordance with provision authorised by subsection (2), the shares must be paid for on redemption.

**160 Financing of redemption**

- (1) Redeemable shares in a limited company may only be redeemed out of –
  - (a) distributable profits of the company, or

- (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.
- (2) Any premium payable on redemption of shares in a limited company must be paid out of distributable profits of the company, subject to the following provision. 5
- (3) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to –
- (a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or 10
- (b) the current amount of the company’s share premium account (including any sum transferred to that account in respect of premiums on the new shares),
- whichever is the less. 15
- (4) The amount of the company’s share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (3).
- (5) Subsections (1) and (2) are subject to –
- section 171 (private companies redeeming shares out of capital), 20
- and
- section 178(4) (terms of redemption enforceable in a winding up).

#### 160A Redeemed shares treated as cancelled

- Where shares in a limited company are redeemed –
- (a) the shares are treated as cancelled, and 25
- (b) the amount of the company’s issued share capital is diminished by the nominal value of the shares accordingly.”.

#### *Purchase by company of its own shares*

#### 573 Power of company to purchase own shares

For section 162 of the Companies Act 1985 (c. 6) (power of company to purchase own shares) substitute – 30

#### “162 Power of company to purchase own shares

- (1) A limited company having a share capital may purchase its own shares (including any redeemable shares), subject to –
- (a) the following provisions of this Chapter, and 35
- (b) any restriction or prohibition in the company’s articles.
- (2) A limited company may not purchase its own shares if as a result of the purchase there would no longer be any issued shares of the company other than redeemable shares or shares held as treasury shares.

#### 162ZA Payment for purchase of own shares 40

- (1) A limited company may not purchase its own shares unless they are fully paid.

- (2) Where a limited company purchases its own shares, the shares must be paid for on purchase.

#### **162ZB Financing of purchase of own shares**

- (1) A limited company may only purchase its own shares out of—
- (a) distributable profits of the company, or 5
  - (b) the proceeds of a fresh issue of shares made for the purpose of financing the purchase.
- (2) Any premium payable on the purchase by a limited company of its own shares must be paid out of distributable profits of the company, subject to the following provision. 10
- (3) If the shares to be purchased were issued at a premium, any premium payable on their purchase by the company may be paid out of the proceeds of a fresh issue of shares made for the purpose of financing the purchase, up to an amount equal to—
- (a) the aggregate of the premiums received by the company on the issue of the shares purchased, or 15
  - (b) the current amount of the company’s share premium account (including any sum transferred to that account in respect of premiums on the new shares),
- whichever is the less. 20
- (4) The amount of the company’s share premium account is reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (3).
- (5) Subsections (1) and (2) are subject to—
- section 171 (private companies purchasing shares out of capital), 25
  - and
  - section 178(4) (terms of purchase enforceable in a winding up).

#### **162ZC Treatment of shares purchased**

- (1) Where a limited company makes a purchase of its own shares and—
- (a) the shares are qualifying shares, and 30
  - (b) the purchase is made out of distributable profits,
- section 162A (treasury shares) applies to the shares purchased.
- (2) For the purposes of this Chapter “qualifying shares” are shares that—
- (a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000, 35
  - (b) are traded on the market known as the Alternative Investment Market established under the rules of the London Stock Exchange plc,
  - (c) are officially listed in an EEA State, or
  - (d) are traded on a regulated market. 40
- In paragraph (a) “the official list” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.
- (3) In any other case where a limited company makes a purchase of its own shares—
- (a) the shares are treated as cancelled, and 45

- (b) the amount of the company’s issued share capital is diminished by the nominal value of the shares accordingly.”.

#### 574 Statement of capital on disclosure by company of purchase etc of own shares

- (1) In section 169 of the Companies Act 1985 (disclosure by company of purchase of own shares) after subsection (1A) insert— 5
- “(1AA) A return required by subsection (1) must be accompanied by a statement of capital.
- (1AB) The statement of capital must state with respect to the company’s share capital immediately following the delivery to it of the shares purchased— 10
- (a) the total number of shares of the company,  
 (b) the aggregate nominal value of those shares,  
 (c) for each class of shares—
- (i) prescribed particulars of the rights attached to the shares, 15  
 (ii) the total number of shares of that class, and  
 (iii) the aggregate nominal value of shares of that class, and  
 (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”.
- (2) After subsection (2) of section 169A of that Act (disclosure by company of cancellation or disposal of treasury shares) insert— 20
- “(2A) A return required by this section must be accompanied by a statement of capital.
- (2B) The statement of capital must state with respect to the company’s share capital immediately following cancellation or disposal (as the case may be) of the shares— 25
- (a) the total number of shares of the company,  
 (b) the aggregate nominal value of those shares,  
 (c) for each class of shares— 30
- (i) prescribed particulars of the rights attached to the shares,  
 (ii) the total number of shares of that class, and  
 (iii) the aggregate nominal value of shares of that class, and  
 (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”.
- 35

#### 575 Copy of contract or memorandum of terms to be available for inspection

- (1) In section 169 (disclosure by company of purchase of own shares), omit subsections (4), (5) and (7) to (9). 40



(2) After that section insert –

**“169AA Copy of contract or memorandum of terms to be available for inspection**

- (1) This section applies where a company enters into –
  - (a) a contract approved under section 164 or 165, or 5
  - (b) a contract for a purchase authorised under section 166.
- (2) A company must keep available for inspection at its registered office –
  - (a) a copy of the contract, or
  - (b) if the contract is not in writing, a written memorandum setting out the terms of the contract. 10
- (3) The copy or memorandum must be kept available for inspection from the conclusion of the contract until the end of the period of ten years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or, as the case may be, the date on which the contract otherwise determines. 15
- (4) Every copy or memorandum required to be kept under this section must be open to inspection without charge –
  - (a) by any member of the company, and
  - (b) if the company is a public company, by any other person.
- (5) If default is made in complying with subsection (2) or (3), or an inspection required under subsection (4) is refused, an offence is committed by every officer of the company who is in default. 20
- (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. 25
- (7) In the case of a refusal of an inspection required under subsection (4) the court may by order compel an immediate inspection.
- (8) The provisions of this section apply to a variation of a contract as they apply to the original contract.”. 30

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

- (1) In section 171 of the Companies Act 1985 (c. 6) (power of private companies to redeem or purchase own shares out of capital), for subsection (1) substitute –
  - “(1) A private limited company may in accordance with this section, but subject to any restriction or prohibition in the company’s articles, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits or the proceeds of a fresh issue of shares.”. 35
- (2) For section 173(4) of the Companies Act 1985 (directors’ opinion as to solvency on exercise of power of private company to redeem or purchase own shares out of capital) substitute –
  - “(4) In forming their opinion for the purposes of subsection (3)(a), the directors must take into account all of the company’s liabilities (including any contingent or prospective liabilities).”.

- (3) After section 177 of that Act (powers of court on application under section 176) insert –

**“177A Notice to registrar**

- (1) The company must, within 15 days after making a payment out of capital, give notice to the registrar. 5
- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company’s share capital immediately following the payment out of capital –
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares, 10
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and 15
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by – 20
- (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”. 25

*Transfers of shares etc*

**577 Registration of transfers of shares and debentures**

- (1) In section 183 of the Companies Act 1985 (c. 6) (transfer and registration) –
- (a) in the heading, omit “and registration”; 30
  - (b) omit subsections (4) to (6).

- (2) After that section insert –

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

- (1) A company must register an allotment of shares or debentures as soon as practicable and in any event within two months after the date of the allotment. 35
- (2) A company must –
- (a) register a transfer of shares or debentures, or
  - (b) send to the transferee notice of refusal to register the transfer, giving reasons for the refusal, 40
- as soon as practicable and in any event within two months after the date on which the transfer is lodged with it.

- (3) The directors must provide the transferee with such further information about the reasons for the refusal as the transferee may reasonably request, but such information does not include copies of minutes of meetings of directors.
- (4) On the application of the transferor of any share or interest in a company, the company must enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee. 5
- (5) If a company fails to comply with this section, an offence is committed by – 10
- (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 2 on the standard scale. 15
- (7) This section does not apply – 20
- (a) in relation to an allotment or transfer of shares if the company has issued a share warrant in respect of the shares (under section 188);
  - (b) in relation to the transmission of shares by operation of law.”.
- (3) Subsection (2) has effect in relation to allotments and transfers of shares and debentures that take effect after this section comes into force.

#### 578 Share certificates and share warrants

In section 185 of the Companies Act 1985 (c. 6) (duty of company as to issue of certificates), after subsection (2) insert – 25

- “(2A) Subsection (1) does not apply in relation to an allotment or transfer of shares if, following the allotment or transfer, the company has issued a share warrant in respect of the shares (under section 188).
- (2B) A company must, within two months of the surrender of a share warrant for cancellation, complete and have ready for delivery the certificates of the shares specified in the warrant (unless its articles provide otherwise).” 30

#### *Register of debenture holders*

#### 579 Register of debenture holders 35

- (1) Any register of debenture holders of a company that is kept by the company must be kept available for inspection – 40
- (a) at the company’s registered office, or
  - (b) at another place in the part of the United Kingdom in which the company is registered.
- (2) A company must give notice to the registrar of the place where any such register is kept available for inspection and of any change in that place.

- (3) No such notice is required if the register has, at all times since it came into existence, been kept available for inspection at the company’s registered office.
- (4) If a company makes default for 14 days in complying with subsection (2), an offence is committed by –
- (a) the company, and 5
  - (b) every officer of the company who is in default,
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale. 10
- (6) References in this section to a register of debenture holders include a duplicate –
- (a) of a register of debenture holders that is kept outside the United Kingdom, or
  - (b) of any part of such a register. 15

#### 580 Right to inspect register etc

- (1) Every register of debenture holders of a company must, except when duly closed, be open to the inspection –
- (a) of the registered holder of any such debentures, or any holder of shares in the company, without charge, and 20
  - (b) of any other person on payment of such fee as may be prescribed.
- (2) Any person may require a copy of the register, or any part of it, on payment of such fee as may be prescribed.
- (3) Any holder of debentures of a company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any trust deed for securing the debentures. 25
- (4) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2) or (3), an offence is committed by every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable 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
- (6) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it. 35
- (7) For the purposes of this section a register is “duly closed” if it is closed in accordance with provision contained –
- (a) in the articles or in the debentures,
  - (b) in the case of debenture stock in the stock certificates, or 40
  - (c) in the trust deed or other document securing the debentures or debenture stock.

The total period for which a register is closed in any year must not exceed 30 days.

- (8) References in this section to a register of debenture holders include a duplicate—
- (a) of a register of debenture holders that is kept outside the United Kingdom, or
  - (b) of any part of such a register. 5

**581 Time limit for claims arising from entry in register**

- (1) Liability incurred by a company—
- (a) from the making or deletion of an entry in the register of debenture holders, or
  - (b) from a failure to make or delete any such entry, 10
- is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period). 15

*Distributions*

**582 Distributions in kind**

- (1) Part 8 of the Companies Act 1985 (c. 6) (distributions) is amended as follows.
- (2) After section 275 insert—

*“Distributions in kind 20*

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

- (1) This section applies for the purpose of determining the amount of any distribution arising from the sale, transfer or other disposition by a company of a non-cash asset. 25
- (2) If the conditions in subsection (3) are met, the amount of the distribution is—
- (a) in a case in which the book value of the asset exceeds the amount or value of the consideration for the disposition, the amount of the excess, and 30
  - (b) in any other case, zero.
- (3) The conditions are—
- (a) that, at the time of the disposition of the asset, the company has profits available for distribution, and
  - (b) that, if the amount of the distribution were determined in accordance with subsection (2), the company could make the distribution without contravening— 35
    - (i) section 263 (general limit on distributions), or
    - (ii) section 264 (restriction on distribution of assets by public companies). 40

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

*Redenomination of share capital*

- 583 Redenomination of share capital** 40
- (1) A limited company having a share capital may by ordinary resolution redenominate its share capital or any class of its share capital.

“Redenominate” means convert shares from having a fixed nominal value in one currency to having a fixed nominal value in another currency.

(2) The conversion must be made at an appropriate spot rate of exchange specified in the resolution.

(3) The rate must be either – 5  
(a) a rate prevailing on a day specified in the resolution, or  
(b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.

The day or period specified for the purposes of paragraph (a) or (b) must be within the period of 28 days ending on the day before the resolution is passed. 10

(4) A resolution under this section may specify conditions which must be met before the redenomination takes effect.

(5) Redenomination in accordance with a resolution under this section takes effect – 15  
(a) on the day on which the resolution is passed, or  
(b) on such later day as may be determined in accordance with the resolution.

(6) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 15 days beginning on the date on which it is passed. 20

(7) A company’s articles may prohibit or restrict the exercise of the power conferred by this section.

#### 584 Calculation of new nominal values

For each class of share the new nominal value of each share is calculated as follows: 25

*Step One*

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

*Step Two*

Translate that amount into the new currency at the rate of exchange specified in the resolution. 30

*Step Three*

Round the resulting figure to the nearest unit or sub-unit of the new currency.

*Step Four*

Divide that amount by the number of shares in the class.

#### 585 Effect of redenomination 35

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

In particular, it does not affect entitlement to dividends (including entitlement to dividends in a particular currency), voting rights or any liability in respect of amounts unpaid on shares. 40

(2) For this purpose the company’s constitution includes the terms on which any shares of the company are allotted or held.

- (3) Subject to subsection (1), references to the old nominal value of the shares in any agreement or statement, or in any deed, instrument or document, shall (unless the context otherwise requires) be read after the resolution takes effect as references to the new nominal value of the shares.

**586 Notice to registrar of redenomination** 5

- (1) If a company having a share capital redenominates any of its share capital, it must within one month after doing so give notice to the registrar, specifying the shares redenominated.
- (2) The notice must –
- (a) state the date on which the resolution was passed, and 10
  - (b) be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company’s share capital as redenominated by the resolution –
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares, 15
  - (c) for each class of shares –
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share 20  
(whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default. 25
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**587 Reduction of capital in connection with redenomination** 30

- (1) A company that passes a resolution redenominating some or all of its shares may, for the purpose of adjusting the nominal values of the redenominated shares to obtain values that are, in the opinion of the company, more suitable, reduce its share capital under this section.
- (2) A reduction of capital under this section requires a special resolution of the company. 35
- (3) Any such resolution must be passed within three months of the resolution effecting the redenomination.
- (4) The amount by which a company’s share capital is reduced under this section must not exceed 10% of the nominal value of the company’s allotted share capital immediately after the reduction. 40
- (5) A reduction of capital under this section does not extinguish or reduce any liability in respect of share capital not paid up.



- (6) Nothing in—
- (a) sections 135 to 135C of the Companies Act 1985 (c. 6) (reduction of capital supported by solvency statement), or
  - (b) sections 135 and 136 to 141 of that Act (reduction of capital requiring confirmation by court),
- applies to a reduction of capital under this section.

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### **588 Notice to registrar of reduction of capital in connection with redenomination**

- (1) A company that passes a resolution under section 587 (reduction of capital in connection with redenomination) must within 15 days after the resolution is passed give notice to the registrar stating—
- (a) the date of the resolution, and
  - (b) the date of the resolution under section 583 in connection with which it was passed.

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This is in addition to the copies of the resolutions themselves that are required to be delivered to the registrar under Chapter 3 of Part 3.

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- (2) The notice must be accompanied by a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as reduced by the resolution—
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) The registrar must register the notice and statement on receipt.
- (5) The reduction of capital is not effective until those documents are registered.
- (6) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the reduction in share capital is in accordance with section 587(4) (reduction of capital not to exceed 10% of nominal value of allotted shares immediately after reduction).
- (7) If a company fails to comply with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment to a fine, and
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

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### **589 Redenomination reserve**

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- (1) The amount by which a company's share capital is reduced under section 587 (reduction of capital in connection with redenomination) must be transferred to a reserve, called "the redenomination reserve".

- (2) The redenomination reserve may be applied by the company in paying up shares to be allotted to members as fully paid bonus shares.
- (3) Subject to that, the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the redenomination reserve were paid-up share capital of the company.

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## PART 20

### TRANSFER OF SECURITIES

#### 590 Transfer of securities: power to make regulations

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

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#### 591 Transfer of securities: extension of powers

- (1) Regulations under section 207 of the Companies Act 1989 may make provision –
- (a) enabling the members of a company or of any designated class of companies to adopt, by ordinary resolution, arrangements under which title to securities is required to be evidenced and transferred without a written instrument; or
- (b) requiring companies, or any designated class of companies, to adopt such arrangements.
- (2) The regulations may make such provision –
- (a) in respect of all securities issued by a company, or
- (b) in respect of all securities of a specified description.
- (3) The arrangements provided for by regulations making such provision as is mentioned in subsection (1) must not be such that a person who, but for the arrangements would be entitled –
- (a) to have his name entered in the company's register of members, or
- (b) to give instructions in respect of any securities, ceases to be so entitled.
- (4) The regulations may –
- (a) prohibit the issue of any certificate by the company in respect of the issue or transfer of securities,
- (b) require the provision by the company to holders of securities of statements (at specified intervals or on specified occasions) of the securities held in their name, and
- (c) make provision as to the matters of which any such certificate or statement is, or is not, evidence.

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This is without prejudice to the generality of the power conferred by section 207 of the Companies Act 1989.

- (5) In this section –
- (a) references to a designated class of companies are to a class designated in the regulations or by order under section 592;
  - (b) “specified” means specified in the regulations; and
  - (c) expressions that are also used in section 207 of the Companies Act 1989 (c. 40) have the same meaning as in that section.
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### **592 Transfer of securities: order-making power**

- (1) The Treasury or the Secretary of State may by order designate classes of companies for the purposes of section 591.
- (2) The Treasury or the Secretary of State may by order provide that, in relation to securities of a specified description –
- (a) in a designated class of companies, or
  - (b) in a specified company,
- specified provisions of the regulations either do not apply or apply subject to specified modifications.
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- (3) In this section –
- (a) “specified” means specified in the order, and
  - (b) “the regulations” means regulations made under section 207 of the Companies Act 1989 by virtue of section 591.
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- (4) An order under this section is subject to negative resolution procedure.
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### **593 Transfer of securities: supplementary provisions**

- (1) Before making regulations under section 207 of the Companies Act 1989, or any order under section 592, the Treasury or the Secretary of State must carry out such consultation as appears to them to be appropriate.
- (2) In section 207 of the Companies Act 1989 –
- (a) the requirement in the second sentence of subsection (4) (rights and obligations under regulations to correspond with those that would arise apart from the regulations) shall cease to have effect, and
  - (b) in subsection (7) for “the purposes mentioned above” substitute “the purposes of this section and section 591 of the Company Law Reform Act 2006”.
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## **PART 21**

### INFORMATION ABOUT INTERESTS IN COMPANY’S SHARES

#### *Introductory*

### **594 Companies to which this Part applies** 35

This Part applies only to public companies.

**595 Shares to which this Part applies**

- (1) References in this Part to a company's shares are to the company's issued shares of a class carrying rights to vote in all circumstances at general meetings of the company (excluding any shares held as treasury shares).
- (2) The temporary suspension of voting rights in respect of any shares does not affect the application of this Part in relation to interests in those or any other shares. 5

*Notice requiring information about interests in shares***596 Notice by company requiring information about interests in its shares**

- (1) A public company may give notice under this section to any person whom the company knows or has reasonable cause to believe – 10
- (a) to be interested in the company's shares, or
- (b) to have been so interested at any time during the three years immediately preceding the date on which the notice is issued.
- (2) The notice may require the person – 15
- (a) to confirm that fact or (as the case may be) to state whether or not it is the case, and
- (b) if he holds, or has during that time held, any such interest, to give such further information as may be required in accordance with the following provisions of this section. 20
- (3) The notice may require the person to whom it is addressed to give particulars of his own present or past interest in the company's shares (held by him at any time during the three year period mentioned in subsection (1)(b)).
- (4) The notice may require the person to whom it is addressed, where – 25
- (a) his interest is a present interest and another interest in the shares subsists, or
- (b) another interest in the shares subsisted during that three year period at a time when his interest subsisted,
- to give, so far as lies within his knowledge, such particulars with respect to that other interest as may be required by the notice. 30
- (5) The particulars referred to in subsections (3) and (4) include –
- (a) the identity of persons interested in the shares in question, and
- (b) whether persons interested in the same shares are or were parties to – 35
- (i) an agreement to which section 620 applies (certain share acquisition agreements), or
- (ii) an agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- (6) The notice may require the person to whom it is addressed, where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it. 40
- (7) The information required by the notice must be given within such reasonable time as may be specified in the notice.

**597 Notice requiring information: order imposing restrictions on shares**

- (1) Where –
- (a) a notice under section 596 (notice requiring information about interests in company’s shares) is served by a company on a person who is or was interested in shares in the company, and 5
  - (b) that person fails to give the company the information required by the notice within the time specified in it,  
the company may apply to the court for an order directing that the shares in question be subject to the restrictions of Part 15 of the Companies Act 1985 (c. 6). 10
- (2) If the court is satisfied that such an order may unfairly affect the rights of third parties in respect of the shares, the court may, for the purpose of protecting those rights and subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order shall not constitute a breach of the restrictions. 15
- (3) On an application under this section the court may make an interim order. Any such order may be made unconditionally or on such terms as the court thinks fit.

**598 Notice requiring information: offences**

- (1) A person who – 20
- (a) fails to comply with a notice under section 596 (notice requiring information about interests in company’s shares), or
  - (b) in purported compliance with such a notice –
    - (i) makes a statement that he knows to be false in a material particular, or 25
    - (ii) recklessly makes a statement that is false in a material particular,  
commits an offence.
- (2) A person does not commit an offence under subsection (1)(a) if he proves that the requirement to give information was frivolous or vexatious. 30
- (3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 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). 40

**599 Notice requiring information: persons exempted from obligation to comply**

- (1) A person is not obliged to comply with a notice under section 596 (notice requiring information about interests in company’s shares) if he is for the time being exempted by the Secretary of State from the operation of that section.
- (2) The Secretary of State must not grant any such exemption unless – 45

- (a) he has consulted the Governor of the Bank of England, and
- (b) he (the Secretary of State) is satisfied that, having regard to any undertaking given by the person in question with respect to any interest held or to be held by him in any shares, there are special reasons why that person should not be subject to the obligations imposed by that section. 5

*Power of members to require company to act*

**600 Power of members to require company to act**

- (1) The members of a company may require it to exercise its powers under section 596 (notice requiring information about interests in shares). 10
- (2) A company is required to do so once it has received requests (to the same effect) from members of the company holding at least 10% of such of the paid-up capital of the company as carries a right to vote at general meetings of the company (excluding any voting rights attached to any shares in the company held as treasury shares). 15
- (3) A request—
  - (a) may be in hard copy form or in electronic form,
  - (b) must—
    - (i) state that the company is requested to exercise its powers under section 596, 20
    - (ii) specify the manner in which the company is requested to act, and
    - (iii) give reasonable grounds for requiring the company to exercise those powers in the manner specified, and
  - (c) must be authenticated by the person or persons making it. 25

**601 Duty of company to comply with requirement**

- (1) A company that is required under section 600 to exercise its powers under section 596 (notice requiring information about interests in company's shares) must exercise those powers in the manner specified in the requests.
- (2) If default is made in complying with subsection (1) an offence is committed by every officer of the company who is in default. 30
- (3) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum. 35

**602 Report to members on outcome of investigation**

- (1) On the conclusion of an investigation carried out by a company in pursuance of a requirement under section 600 the company must cause a report of the information received in pursuance of the investigation to be prepared. 40  
The report must be made available at the company's registered office within a reasonable period (not more than 15 days) after the conclusion of the investigation.

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- (2) Where –
- (a) a company undertakes an investigation in pursuance of a requirement under section 600, and
  - (b) the investigation is not concluded within three months after the date on which the company became subject to the requirement, 5  
the company must cause to be prepared in respect of that period, and in respect of each succeeding period of three months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation.
- (3) Each such report must be made available at the company's registered office within a reasonable period (not more than 15 days) after the end of the period to which it relates. 10
- (4) The company must within three days of making any report prepared under this section available at its registered office, notify the members who made the requests under section 596 that the report is so available. 15
- (5) For the purposes of this section an investigation carried out by a company in pursuance of a requirement under section 600 is concluded when –
- (a) the company has made all such inquiries as are necessary or expedient for the purposes of the requirement, and
  - (b) in the case of each such inquiry – 20
    - (i) a response has been received by the company, or
    - (ii) the time allowed for a response has elapsed.
- (6) A report prepared under this section must be kept at the company's registered office for at least six years after the day on which it is first made available there.
- 603 Report to members: offences** 25
- (1) If default is made in complying with section 602 (report to members on outcome of investigation), an offence is committed by every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine; 30
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- 604 Right to inspect and request copy of reports**
- (1) Any report prepared under section 602 must be open to inspection by any person without charge. 35
- (2) Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such report or any part of it. The copy must be provided within ten days after the request is received by the company.
- (3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by – 40
- (a) the company, and
  - (b) every officer of the company who is in default.

- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it. 5

*Register of interests disclosed*

**605 Register of interests disclosed**

- (1) The company must keep a register of information received by it in pursuance of a requirement imposed under section 596 (notice requiring information about interests in company's shares). 10
- (2) Whenever the company receives any such information, it must enter in the register –
- (a) the fact that the requirement was imposed and the date on which it was imposed, and 15
- (b) the information received in pursuance of the requirement.
- (3) The information must be entered against the name of the present holder of the shares in question or, if there is no present holder or the present holder is not known, against the name of the person holding the interest. 20
- (4) It must do so within the period of three days after the information is received by it.
- (5) The register must be made up so that the entries against the names entered in it appear in chronological order.
- (6) If default is made in complying with this section an offence is committed by – 25
- (a) the company, and
- (b) every officer of the company 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. 30
- (8) The company is not by virtue of anything done for the purposes of this section affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares.

**606 Register to be kept available for inspection** 35

- (1) The register kept under section 605 (register of interests disclosed) must be kept available for inspection at the company's registered office or at the place where the company's register of members is kept.
- (2) A company must give notice to the registrar of companies of the place where the register is kept available for inspection and of any change in that place. 40
- (3) No such notice is required if the register has at all times been kept available for inspection at the company's registered office.



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- (4) If default is made in complying with subsection (1), or a company makes default for 14 days in complying with subsection (2), an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default. 5
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- 607 Associated index 10**
- (1) Unless the register kept under section 605 (register of interests disclosed) is kept in such a form as itself to constitute an index, the company must keep an index of the names entered in it.
- (2) The company must make any necessary entry or alteration in the index within ten days after the date on which any entry or alteration is made in the register. 15
- (3) The index must contain, in respect of each name, a sufficient indication to enable the information entered against it to be readily found.
- (4) The index must be at all times kept available for inspection at the same place as the register.
- (5) If default is made in complying with this section, an offence is committed by – 20
- (a) the company, and
  - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale. 25
- 608 Right to inspect and request copy of entries**
- (1) The register required to be kept under section 605 (register of interests disclosed), and any associated index, must be open to inspection by any person without charge. 30
- (2) Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any entry in the register.
- (3) The rights conferred by subsections (1) and (2) are subject to the provisions of section 609 (court supervision of purpose for which rights may be exercised).
- (4) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by – 35
- (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. 40

- (6) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

#### 609 Court supervision of purpose for which rights may be exercised

- (1) A person making a request – 5  
 (a) for inspection under section 608(1), or  
 (b) for a copy under section 608(2),  
 must state the reason why the request is made.
- (2) The company must – 10  
 (a) comply with the request if it is satisfied that it is made for a proper purpose, and  
 (b) refuse the request if it is not so satisfied.
- (3) If the company refuses the request, it must inform the person making the request, stating the reason why it is not satisfied.
- (4) A person whose request is refused may apply to the court. 15
- (5) If an application is made to the court –  
 (a) the person who made the request must notify the company, and  
 (b) the company must use its best endeavours to notify any persons whose details would be disclosed if the company were required to comply with the request. 20
- (6) If the court is satisfied that the request is for a proper purpose, it must direct the company to comply with the request.  
 If no such direction is made, the company must not comply with the request.

#### 610 Entries not to be removed from register

- (1) Entries in the register kept under section 605 (register of interests disclosed) must not be deleted except in accordance with – 25  
 section 611 (old entries), or  
 section 612 (incorrect entry relating to third party).
- (2) If an entry is deleted in contravention of subsection (1), the company must restore it as soon as reasonably practicable. 30
- (3) If default is made in complying with subsection (1) or (2), an offence is committed by –  
 (a) the company, and  
 (b) every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention of subsection (2), a daily default fine not exceeding one-tenth of level 3 on the standard scale. 35

**611 Removal of entries from register: old entries**

A company may remove an entry from the register kept under section 605 (register of interests disclosed) if more than six years have elapsed since the entry was made.

**612 Removal of entries from register: incorrect entry relating to third party** 5

- (1) This section applies where in pursuance of an obligation imposed by a notice under section 596 (notice requiring information about interests in company’s shares) a person gives to a company the name and address of another person as being interested in shares in the company.
- (2) That other person may apply to the company for the removal of the entry from the register. 10
- (3) If the company is satisfied that the information in pursuance of which the entry was made is incorrect, it shall remove the entry.
- (4) If an application under subsection (3) is refused, the applicant may apply to the court for an order directing the company to remove the entry in question from the register. 15  
The court may make such an order if it thinks fit.

**613 Adjustment of entry relating to share acquisition agreement**

- (1) If a person who is identified in the register kept by a company under section 605 (register of interests disclosed) as being a party to an agreement to which section 620 applies (certain share acquisition agreements) ceases to be a party to the agreement, he may apply to the company for the inclusion of that information in the register. 20
- (2) If the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears in the register as a party to the agreement. 25
- (3) If an application under this section is refused (otherwise than on the ground that the information has already been recorded), the applicant may apply to the court for an order directing the company to include the information in question in the register. 30  
The court may make such an order if it thinks fit.

**614 Duty of company ceasing to be public company**

- (1) If a company ceases to be a public company, it must continue to keep any register kept under section 605 (register of interests disclosed), and any associated index, until the end of the period of six years after it ceased to be such a company. 35
- (2) If default is made in complying with this section, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of continued contravention to a daily default fine not exceeding one-tenth of level 3 on the standard scale. 40

*Meaning of interest in shares***615 Interest in shares: general**

- (1) This section applies to determine for the purposes of this Part whether a person has an interest in shares.
- (2) In this Part— 5
- (a) a reference to an interest in shares includes an interest of any kind whatsoever in the shares, and
- (b) any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded.
- (3) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is treated as having an interest in the shares. 10
- (4) A person is treated as having an interest in shares if—
- (a) he enters into a contract to acquire them, or
- (b) not being the registered holder, he is entitled—
- (i) to exercise any right conferred by the holding of the shares, or 15
- (ii) to control the exercise of any such right.
- (5) For the purposes of subsection (4)(b) a person is entitled to exercise or control the exercise of a right conferred by the holding of shares if he—
- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or 20
- (b) is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.
- (6) A person is treated as having an interest in shares if—
- (a) he has a right to call for delivery of the shares to himself or to his order, or 25
- (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares.
- This applies whether the right or obligation is conditional or absolute.
- (7) Persons having a joint interest are treated as each having that interest.
- (8) It is immaterial that shares in which a person has an interest are unidentifiable. 30

**616 Interest in shares: right to subscribe for shares**

- (1) Section 596 (notice by company requiring information about interests in its shares) applies in relation to a person who has, or previously had, or is or was entitled to acquire, a right to subscribe for shares in the company as it applies in relation to a person who is or was interested in shares in that company. 35
- (2) References in that section to an interest in shares shall be read accordingly.

**617 Interest in shares: family interests**

- (1) For the purposes of this Part a person is taken to be interested in shares in which—
- (a) his spouse or civil partner, or 40
- (b) any infant child or step-child of his,

is interested.

- (2) In relation to Scotland “infant” means a person under the age of 18 years.

**618 Interest in shares: corporate interests**

- (1) For the purposes of this Part a person is taken to be interested in shares if a body corporate is interested in them and – 5
- (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
  - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.
- (2) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if – 10
- (a) another body corporate is entitled to exercise or control the exercise of that voting power, and
  - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate. 15
- (3) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if –
- (a) he has a right (whether or not subject to conditions) the exercise of which would make him so entitled, or
  - (b) he is under an obligation (whether or not subject to conditions) the fulfilment of which would make him so entitled. 20

**619 Interest in shares: agreement to acquire interests in a particular company**

- (1) For the purposes of this Part an interest in shares may arise from an agreement between two or more persons that includes provision for the acquisition by any one or more of them of interests in shares of a particular public company (the “target company” for that agreement). 25
- (2) This section applies to such an agreement if –
- (a) the agreement includes provision imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in the shares of the target company acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the company’s shares to which the agreement relates), and 30
  - (b) an interest in the target company’s shares is in fact acquired by any of the parties in pursuance of the agreement. 35
- (3) The reference in subsection (2) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (4) Once an interest in shares in the target company has been acquired in pursuance of the agreement, this section continues to apply to the agreement so long as the agreement continues to include provisions of any description mentioned in subsection (2). 40
- This applies irrespective of –

- (a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement;
- (b) any change in the persons who are for the time being parties to it;
- (c) any variation of the agreement.
- References in this subsection to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement. 5
- (5) In this section –
- (a) “agreement” includes any agreement or arrangement, and
- (b) references to provisions of an agreement include – 10
- (i) undertakings, expectations or understandings operative under an arrangement, and
- (ii) any provision whether express or implied and whether absolute or not.
- References elsewhere in this Part to an agreement to which this section applies have a corresponding meaning. 15
- (6) This section does not apply –
- (a) to an agreement that is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or 20
- (b) to an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.
- 620 Extent of obligation in case of share acquisition agreement**
- (1) For the purposes of this Part each party to an agreement to which section 619 applies is treated as interested in all shares in the target company in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party was acquired, or includes any interest that was acquired, in pursuance of the agreement). 25
- (2) For those purposes an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of section 619 (and this section) in relation to the agreement. 30
- (3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under section 617 or 618 (family or corporate interests) or by the application of section 619 (and this section) in relation to any other agreement with respect to shares in the target company to which he is a party. 35
- (4) A notification with respect to his interest in shares in the target company made to the company under this Part by a person who is for the time being a party to an agreement to which section 619 applies must – 40
- (a) state that the person making the notification is a party to such an agreement,
- (b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and 45

- (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 619 (and this section) and, if so, the number of those shares.

*Other supplementary provisions*

**621 Information protected from wider disclosure** 5

- (1) Information in respect of which a company is for the time being entitled to any exemption conferred by regulations under section 387(3) (information about related undertakings to be given in notes to accounts: exemption where disclosure harmful to company's business) –
  - (a) must not be included in a report under section 602 (report to members on outcome of investigation), and 10
  - (b) must not be made available under section 608 (right to inspect and request copy of entries).
- (2) Where any such information is omitted from a report under section 602, that fact must be stated in the report. 15

**622 Reckoning of periods for fulfilling obligations**

Where the period allowed by any provision of this Part for fulfilling an obligation is expressed as a number of days, any day that is a Saturday or Sunday or a bank holiday in the part of the United Kingdom in which the company is registered shall be disregarded in reckoning that period. 20

**623 Power to make further provision by regulations**

- (1) The Secretary of State may by regulations amend –
  - (a) the definition of shares to which this Part applies (section 595),
  - (b) the provisions as to notice by a company requiring information about interests in its shares (section 596), and 25
  - (c) the provisions as to what is taken to be an interest in shares (sections 615 and 616).
- (2) The regulations may amend, repeal or replace those provisions and make such other consequential amendments or repeals of provisions of this Part as appear to the Secretary of State to be appropriate. 30
- (3) Regulations under this section are subject to affirmative resolution procedure.

**PART 22**

## TAKEOVERS ETC

**CHAPTER 1**

## THE TAKEOVER PANEL

*The Panel and its rules* 5**624 The Panel**

- (1) The body known as the Panel on Takeovers and Mergers (“the Panel”) is to have the functions conferred on it by or under this Chapter.
- (2) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions. 10
- (3) The Panel may make arrangements for any of its functions to be discharged by –
- (a) a committee or sub-committee of the Panel, or
  - (b) an officer or member of staff of the Panel, or a person acting as such.
- This is subject to section 625(4) and (5). 15

**625 Rules**

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



- (4) In relation to rules made by virtue of section 639 (fees and charges), functions under this section may be discharged either by the Panel itself or by a committee of the Panel (but not otherwise).
- (5) In relation to rules of any other description, the Panel must discharge its functions under this section by a committee of the Panel. 5
- (6) Section 1 (meaning of “company”) does not apply for the purposes of this section.
- (7) In this section “takeover bid” includes a takeover bid within the meaning of the Takeovers Directive.
- (8) In this Chapter “the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council. 10
- (9) A reference to rules in the following provisions of this Chapter is to rules under this section.

#### **626 Further provisions about rules**

- (1) Rules may – 15
  - (a) make different provision for different purposes;
  - (b) make provision subject to exceptions or exemptions;
  - (c) contain incidental, supplemental, consequential or transitional provision;
  - (d) authorise the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances. 20Rules made by virtue of paragraph (d) must require the Panel to give reasons for acting as mentioned in that paragraph.
- (2) Rules must be made by an instrument in writing.
- (3) Immediately after an instrument containing rules is made, the text must be made available to the public, with or without payment, in whatever way the Panel thinks appropriate. 25
- (4) A person is not to be taken to have contravened a rule if he shows that at the time of the alleged contravention the text of the rule had not been made available as required by subsection (3). 30
- (5) The production of a printed copy of an instrument purporting to be made by the Panel on which is endorsed a certificate signed by an officer of the Panel authorised by it for that purpose and stating –
  - (a) that the instrument was made by the Panel,
  - (b) that the copy is a true copy of the instrument, and 35
  - (c) that on a specified date the text of the instrument was made available to the public as required by subsection (3),is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (6) A certificate purporting to be signed as mentioned in subsection (5) is to be treated as having been properly signed unless the contrary is shown. 40
- (7) A person who wishes in any legal proceedings to rely on an instrument by which rules are made may require the Panel to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (5).

**627 Rulings**

- (1) The Panel may give rulings on the interpretation, application or effect of rules.
- (2) To the extent and in the circumstances specified in rules, and subject to any review or appeal, a ruling has binding effect.

**628 Directions**

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Rules may contain provision conferring power on the Panel to give any direction that appears to the Panel to be necessary in order –

- (a) to restrain a person from acting (or continuing to act) in breach of rules;
- (b) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules;
- (c) otherwise to secure compliance with rules.

10

*Information***629 Power to require documents and information**

- (1) The Panel may by notice in writing require a person – 15
  - (a) to produce any documents that are specified or described in the notice;
  - (b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.
- (2) A requirement under subsection (1) must be complied with – 20
  - (a) at a place specified in the notice, and
  - (b) before the end of such reasonable period as may be so specified.
- (3) This section applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions.
- (4) The Panel may require – 25
  - (a) any document produced to be authenticated, or
  - (b) any information provided (whether in a document or otherwise) to be verified,

in such manner as it may reasonably require.
- (5) The Panel may authorise a person to exercise any of its powers under this section. 30
- (6) A person exercising a power by virtue of subsection (5) must, if required to do so, produce evidence of his authority to exercise the power.
- (7) The production of a document in pursuance of this section does not affect any lien that a person has on the document.
- (8) The Panel may take copies of or extracts from a document produced in pursuance of this section. 35
- (9) A reference in this section to the production of a document includes a reference to the production of – 40
  - (a) a hard copy of information recorded otherwise than in hard copy form, or
  - (b) information in a form from which a hard copy can be readily obtained.

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

### 630 Restrictions on disclosure

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

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

### **631 Offence of disclosure in contravention of section 630**

- (1) A person who discloses information in contravention of section 630 is guilty of an offence, unless – 5
- (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in section 630(1), or
  - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (2) A person guilty of an offence under this section is liable – 10
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction – 15
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) Where a company or other body corporate commits an offence under this section, an offence is also committed by every officer of the company or other body corporate who is in default. 20

#### *Co-operation*

### **632 Panel’s duty of co-operation**

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

#### *Hearings and appeals* 35

### **633 Hearings and appeals**

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

- (3) Rules must provide for there to be a right of appeal against a decision of the Hearings Committee to an independent tribunal (the “Takeover Appeal Board”) in such circumstances and subject to such conditions as are specified in the rules.
- (4) Rules may contain – 5
  - (a) provision as to matters of procedure in relation to proceedings before the Hearings Committee (including provision imposing time limits);
  - (b) provision about evidence in such proceedings;
  - (c) provision as to the powers of the Hearings Committee dealing with a matter referred to it; 10
  - (d) provision about enforcement of decisions of the Hearings Committee and the Takeover Appeal Board.
- (5) Rules must contain provision –
  - (a) requiring the Panel, when acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, to do so by an officer or member of staff of the Panel (or a person acting as such); 15
  - (b) preventing a person who is or has been a member of the committee mentioned in section 625(4) from being a member of the Hearings Committee or the Takeover Appeal Board;
  - (c) preventing a person who is a member of the committee mentioned in section 625(4), of the Hearings Committee or of the Takeover Appeal Board from acting as mentioned in paragraph (a). 20

*Contravention of rules etc*

**634 Sanctions**

- (1) Rules may contain provision conferring power on the Panel to impose sanctions on a person who has – 25
  - (a) acted in breach of rules, or
  - (b) failed to comply with a direction given by virtue of section 628.
- (2) Subsection (3) applies where rules made by virtue of subsection (1) confer power on the Panel to impose a sanction of a kind not provided for by the City Code on Takeovers and Mergers as it had effect immediately before the passing of this Act. 30
- (3) The Panel must prepare a statement (a “policy statement”) of its policy with respect to – 35
  - (a) the imposition of the sanction in question, and
  - (b) where the sanction is in the nature of a financial penalty, the amount of the penalty that may be imposed.

An element of the policy must be that, in making a decision about any such matter, the Panel has regard to the factors mentioned in subsection (4).
- (4) The factors are – 40
  - (a) the seriousness of the breach or failure in question in relation to the nature of the rule or direction contravened;
  - (b) the extent to which the breach or failure was deliberate or reckless;
  - (c) whether the person on whom the sanction is to be imposed is an individual. 45

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

**635 Failure to comply with rules about bid documentation**

- (1) This section applies where a takeover bid is made for a company that has securities carrying voting rights admitted to trading on a regulated market in the United Kingdom.
- (2) Where an offer document published in respect of the bid does not comply with offer document rules, an offence is committed by – 15
  - (a) the person making the bid, and
  - (b) any director, member, employee or agent of the person making the bid who caused the document to be published.
- (3) A person commits an offence under subsection (2) only if – 20
  - (a) he knew that the offer document did not comply, or was reckless as to whether it complied, and
  - (b) he failed to take all reasonable steps to secure that it did comply.
- (4) Where a company or other body corporate commits an offence under subsection (2), an offence is also committed by every officer of the company or other body corporate who is in default. 25
- (5) Where a response document published in respect of the bid does not comply with response document rules, an offence is committed by any director or other officer of the company referred to in subsection (1) who – 30
  - (a) knew that the response document did not comply, or was reckless as to whether it complied, and
  - (b) failed to take all reasonable steps to secure that it did comply.
- (6) A person guilty of an offence under this section is liable – 35
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) Nothing in this section affects any power of the Panel in relation to the enforcement of its rules.
- (8) Section 1 (meaning of “company”) does not apply for the purposes of this section. 40
- (9) In this section –
  - “designated” means designated in rules;
  - “offer document” means a document required to be published by rules giving effect to Article 6.2 of the Takeovers Directive;

- “offer document rules” means rules designated as rules that give effect to Article 6.3 of that Directive;
- “response document” means a document required to be published by rules giving effect to Article 9.5 of that Directive;
- “response document rules” means rules designated as rules that give effect to the first sentence of Article 9.5 of that Directive; 5
- “securities” means shares or debentures;
- “takeover bid” has the same meaning as in that Directive;
- “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances. 10

### 636 Compensation

- (1) Rules may confer power on the Panel to order a person to pay such compensation as it thinks just and reasonable if he is in breach of a rule the effect of which is to require the payment of money.
- (2) Rules made by virtue of this section may include provision for the payment of interest (including compound interest). 15

### 637 Enforcement by the court

- (1) If, on the application of the Panel, the court is satisfied –
- (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or 20
- (b) that a person has contravened a rule-based requirement or a disclosure requirement,
- the court may make any order it thinks fit to secure compliance with the requirement.
- (2) In subsection (1) “the court” means the High Court or, in Scotland, the Court of Session. 25
- (3) Except as provided by subsection (1), no person –
- (a) has a right to seek an injunction, or
- (b) in Scotland, has title or interest to seek an interdict or an order for specific performance, 30
- to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.
- (4) In this section –
- “contravene” includes fail to comply;
- “disclosure requirement” means a requirement imposed under section 629; 35
- “rule-based requirement” means a requirement imposed by or under rules.

### 638 No action for breach of statutory duty etc

- (1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty. 40

- (2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or (subject to any provision made by rules) affect the validity of any other thing.
- (3) In this section –
- (a) “contravention” includes failure to comply; 5
  - (b) “disclosure requirement” and “rule-based requirement” have the same meaning as in section 637.

### *Funding*

#### **639 Fees and charges**

- (1) Rules may provide for fees or charges to be payable to the Panel for the purpose of meeting any part of its expenses. 10
- (2) A reference in this section or section 640 to expenses of the Panel is to any expenses that have been or are to be incurred by the Panel in, or in connection with, the discharge of its functions, including in particular –
- (a) payments in respect of the expenses of the Takeover Appeal Board; 15
  - (b) the cost of repaying the principal of, and of paying any interest on, any money borrowed by the Panel;
  - (c) the cost of maintaining adequate reserves.

#### **640 Levy**

- (1) For the purpose of meeting any part of the expenses of the Panel, the Secretary of State may by regulations provide for a levy to be payable to the Panel –
- (a) by specified persons or bodies, or persons or bodies of a specified description, or
  - (b) on transactions, of a specified description, in securities on specified markets. 25
- In this subsection “specified” means specified in the regulations.
- (2) The power to specify (or to specify descriptions of) persons or bodies must be exercised in such a way that the levy is payable only by persons or bodies that appear to the Secretary of State –
- (a) to be capable of being directly affected by the exercise of any of the functions of the Panel, or
  - (b) otherwise to have a substantial interest in the exercise of any of those functions. 30
- (3) Regulations under this section may in particular –
- (a) specify the rate of the levy and the period in respect of which it is payable at that rate; 35
  - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (4) In determining the rate of the levy payable in respect of a particular period, the Secretary of State –
- (a) must take into account any other income received or expected by the Panel in respect of that period;
  - (b) may take into account estimated as well as actual expenses of the Panel in respect of that period. 40



- 
- (5) The Panel must—
- (a) keep proper accounts in respect of any amounts of levy received by virtue of this section;
  - (b) prepare, in relation to each period in respect of which any such amounts are received, a statement of account relating to those amounts in such form and manner as is specified in the regulations. 5
- Those accounts must be audited, and the statement certified, by persons appointed by the Secretary of State.
- (6) Regulations under this section—
- (a) are subject to affirmative resolution procedure if subsection (7) applies to them; 10
  - (b) otherwise, are subject to negative resolution procedure.
- (7) This subsection applies to—
- (a) the first regulations under this section;
  - (b) any other regulations under this section that would result in a change in the persons or bodies by whom, or the transactions on which, the levy is payable. 15
- (8) If a draft of an instrument containing regulations under this section would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument. 20
- 641 Recovery of fees, charges or levy**
- An amount payable by any person or body by virtue of section 639 or 640 is a debt due from that person or body to the Panel, and is recoverable accordingly.
- Miscellaneous and supplementary* 25
- 642 Panel as party to proceedings**
- The Panel is capable (despite being an unincorporated body) of—
- (a) bringing proceedings under this Chapter in its own name;
  - (b) bringing or defending any other proceedings in its own name.
- 643 Exemption from liability in damages** 30
- (1) Neither the Panel, nor any person within subsection (2), is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel’s functions.
- (2) A person is within this subsection if—
- (a) he is (or is acting as) a member, officer or member of staff of the Panel, or 35
  - (b) he is a person authorised under section 629(5).
- (3) Subsection (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the 40

Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights).

#### 644 Privilege against self-incrimination

- (1) A statement made by a person in response to—
- (a) a requirement under section 629(1), or 5
  - (b) an order made by the court under section 637 to secure compliance with such a requirement,
- may not be used against him in criminal proceedings in which he is charged with an offence to which this subsection applies.
- (2) Subsection (1) applies to any offence other than an offence under one of the following provisions (which concern false statements made otherwise than on oath)—
- (a) section 5 of the Perjury Act 1911 (c. 6);
  - (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39); 15
  - (c) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

#### 645 Annual reports

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

#### 646 Amendments to Financial Services and Markets Act 2000

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

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

## 647 Power to extend to Isle of Man and Channel Islands

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

## CHAPTER 2

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### IMPEDIMENTS TO TAKEOVERS

#### *Opting in and opting out*

## 648 Opting in and opting out

- (1) A company may by special resolution (an “opting-in resolution”) opt in for the purposes of this Chapter if the following three conditions are met in relation to the company. 35
- (2) The first condition is that the company has voting shares admitted to trading on a regulated market.
- (3) The second condition is that –
  - (a) the company’s articles of association – 40

- 
- (i) do not contain any such restrictions as are mentioned in Article 11 of the Takeovers Directive, or
- (ii) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article, 5
- and
- (b) those articles do not contain any other provision which would be incompatible with that Article.
- (4) The third condition is that – 10
- (a) no shares conferring special rights in the company are held by –
- (i) a minister,
- (ii) a nominee of, or any other person acting on behalf of, a minister, or
- (iii) a company directly or indirectly controlled by a minister, 15
- and
- (b) no such rights are exercisable by or on behalf of a minister under any enactment.
- (5) A company may revoke an opting-in resolution by a further special resolution (an “opting-out resolution”).
- (6) For the purposes of subsection (3), a reference in Article 11 of the Takeovers Directive to Article 7(1) or 9 of that Directive is to be read as referring to rules under section 625(1) giving effect to the relevant Article. 20
- (7) In subsection (4) “minister” means –
- (a) the holder of an office in Her Majesty’s Government in the United Kingdom; 25
- (b) the Scottish Ministers;
- (c) a Minister within the meaning given by section 7(3) of the Northern Ireland Act 1998 (c. 47);
- and for the purposes of that subsection “minister” also includes the Treasury, the Board of Trade, the Defence Council and the National Assembly for Wales. 30
- (8) The Secretary of State may by order subject to negative resolution procedure provide that subsection (4) applies in relation to a specified person or body that exercises functions of a public nature as it applies in relation to a minister. “Specified” means specified in the order.
- 649 Further provision about opting-in and opting-out resolutions 35**
- (1) An opting-in resolution or an opting-out resolution must specify the date from which it is to have effect (the “effective date”).
- (2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.
- (3) The second and third conditions in section 648 must be met at the time when an opting-in resolution is passed, but the first one does not need to be met until the effective date. 40
- (4) An opting-in resolution passed before the time when voting shares of the company are admitted to trading on a regulated market complies with the

requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.

- (5) An opting-in resolution passed before the commencement of this section complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that commencement. 5
- (6) The effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which a copy of the opting-in resolution was forwarded to the registrar.
- (7) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent the second condition in section 648 from being met is of no effect until the effective date of an opting-out resolution passed by the company. 10

*Consequences of opting in*

**650 Effect on contractual restrictions** 15

- (1) The following provisions have effect where a takeover bid is made for an opted-in company.
- (2) An agreement to which this section applies is invalid in so far as it places any restriction –
  - (a) on the transfer to the offeror, or at his direction to another person, of shares in the company during the offer period; 20
  - (b) on the transfer to any person of shares in the company at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company;
  - (c) on rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid; 25
  - (d) on rights to vote at a general meeting of the company that –
    - (i) is the first such meeting to be held after the end of the offer period, and 30
    - (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.
- (3) This section applies to an agreement –
  - (a) entered into between a person holding shares in the company and another such person on or after 21st April 2004, or 35
  - (b) entered into at any time between such a person and the company,and it applies to such an agreement even if the law applicable to the agreement (apart from this section) is not the law of a part of the United Kingdom.
- (4) The reference in subsection (2)(c) to rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid includes a reference to rights to vote on a written resolution concerned with that question. 40
- (5) For the purposes of subsection (2)(c), action which might result in the frustration of a bid is any action of that kind specified in rules under section 625(1) giving effect to Article 9 of the Takeovers Directive. 45

- 
- (6) If a person suffers loss as a result of any act or omission that would (but for this section) be a breach of an agreement to which this section applies, he is entitled to compensation, of such amount as the court considers just and equitable, from any person who would (but for this section) be liable to him for committing or inducing the breach. 5
- (7) In subsection (6) “the court” means the High Court or, in Scotland, the Court of Session.
- (8) A reference in this section to voting shares in the company does not include—
- (a) debentures, or
  - (b) shares carrying rights to vote that, under the company’s articles of association, arise only where specified pecuniary advantages are not provided. 10
- In paragraph (b) “rights to vote” means rights to vote at general meetings of the company.
- 651 Power of offeror to require general meeting to be called** 15
- (1) Where a takeover bid is made for an opted-in company, the offeror may by making a request to the directors of the company require them to call a general meeting of the company if, at the date at which the request is made, he holds shares amounting to not less than 75% in value of all the voting shares in the company. 20
- (2) The reference in subsection (1) to voting shares in the company does not include—
- (a) debentures, or
  - (b) shares carrying rights to vote that, under the company’s articles of association, arise only where specified pecuniary advantages are not provided. 25
- In paragraph (b) “rights to vote” means rights to vote at general meetings of the company.
- (3) Sections 282 to 284 (members’ power to require general meetings to be called) apply as they would do if subsection (1) above were substituted for subsections (1) and (2) of section 282, and with any other necessary modifications. 30

*Supplementary*

**652 Communication of decisions**

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

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

### 653 Interpretation of Chapter

- (1) In this Chapter –
  - “company” means –
    - (a) a company within the meaning of this Act, or
    - (b) an unregistered company within the meaning of section 718 of the Companies Act 1985 (c. 6); 15
  - “offeror” and “takeover bid” have the same meaning as in the Takeovers Directive;
  - “offer period”, in relation to a takeover bid, means the time allowed for acceptance of the bid by –
    - (a) rules under section 625(1) giving effect to Article 7(1) of the Takeovers Directive, or
    - (b) where the rules giving effect to that Article which apply to the bid are those of an EEA State other than the United Kingdom, those rules; 20
  - “opted-in company” means a company in relation to which –
    - (a) an opting-in resolution has effect, and
    - (b) the conditions in section 648(2) and (4) continue to be met;
  - “opting-in resolution” has the meaning given by section 648(1);
  - “opting-out resolution” has the meaning given by section 648(5); 30
  - “the Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;
  - “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances;
  - “voting shares” means shares carrying voting rights. 35
- (2) For the purposes of this Chapter –
  - (a) securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares;
  - (b) debentures issued by a company are treated as shares in the company if they carry voting rights. 40

### 654 Transitory provision

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

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

## 655 Power to extend to Isle of Man and Channel Islands

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

## CHAPTER 3

### AMENDMENTS TO COMPANIES ACT 1985

## 656 Matters to be dealt with in directors' report 25

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

#### "PART 7

#### DISCLOSURE REQUIRED BY CERTAIN PUBLICLY-TRADED COMPANIES 30

- 13 (1) This Part of this Schedule applies to the directors' report for a financial year if the company had securities carrying voting rights admitted to trading on a regulated market at the end of that year.
- (2) The report shall contain detailed information, by reference to the end of that year, on the following matters – 35
- (a) the structure of the company's capital, including in particular –
    - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company, and 40



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

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

**657 Takeover offers**

- (1) Schedule 3 (which makes amendments to Part 13A of the Companies Act 1985 (c. 6)) has effect.
- (2) In Schedule 22 to the Companies Act 1985 (provisions of that Act applying to unregistered companies), at the appropriate place insert –

5

“Part 13A            Takeover offers.    In relation to the company referred to in section 428(8), to apply only if the company has voting shares (within the meaning given by section 430H) admitted to trading on a regulated market.”.

10

**PART 23**

COMPANY INVESTIGATIONS

**658 Powers of Secretary of State to give directions to inspectors**

15

- (1) In Part 14 of the Companies Act 1985 (investigation of companies and their affairs), after section 446 insert –

*“Powers of Secretary of State to give directions to inspectors*

**446A General powers to give directions**

- (1) In exercising his functions an inspector shall comply with any direction given to him by the Secretary of State under this section. 20
- (2) The Secretary of State may give an inspector appointed under section 431, 432(2) or 442(1) a direction –
  - (a) as to the subject matter of his investigation (whether by reference to a specified area of a company’s operation, a specified transaction, a period of time or otherwise), or 25
  - (b) which requires the inspector to take or not to take a specified step in his investigation.
- (3) The Secretary of State may give an inspector appointed under any provision of this Part a direction requiring him to secure that a specified report under section 437 –
  - (a) includes the inspector’s views on a specified matter,
  - (b) does not include any reference to a specified matter,
  - (c) is made in a specified form or manner, or
  - (d) is made by a specified date. 30
- (4) A direction under this section –
  - (a) may be given on an inspector’s appointment,
  - (b) may vary or revoke a direction previously given, and
  - (c) may be given at the request of an inspector. 35
- (5) In this section – 40

- (a) a reference to an inspector’s investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary);
- (b) “specified” means specified in a direction under this section. 5

#### **446B Direction to terminate investigation**

- (1) The Secretary of State may direct an inspector to take no further steps in his investigation.
- (2) The Secretary of State may give a direction under this section to an inspector appointed under section 432(1) or 442(3) only on the grounds that it appears to him that – 10
  - (a) matters have come to light in the course of the inspector’s investigation which suggest that a criminal offence has been committed, and
  - (b) those matters have been referred to the appropriate prosecuting authority. 15
- (3) Where the Secretary of State gives a direction under this section, any direction already given to the inspector under section 437(1) to produce an interim report, and any direction given to him under section 446A(3) in relation to such a report, shall cease to have effect. 20
- (4) Where the Secretary of State gives a direction under this section, the inspector shall not make a final report to the Secretary of State unless – 25
  - (a) the direction was made on the grounds mentioned in subsection (2) and the Secretary of State directs the inspector to make a final report to him, or
  - (b) the inspector was appointed under section 432(1) (appointment in pursuance of order of the court).
- (5) An inspector shall comply with any direction given to him under this section.
- (6) In this section, a reference to an inspector’s investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary).” 30
- (2) In section 431 of that Act (inspectors’ powers during investigation) in subsection (1) for “report on them in such manner as he may direct” substitute “report the result of their investigations to him”. 35
- (3) In section 432 of that Act (other company investigations) in subsection (1) for “report on them in such manner as he directs” substitute “report the result of their investigations to him”.
- (4) In section 437 of that Act (inspectors’ reports) – 40
  - (a) in subsection (1) omit the second sentence, and
  - (b) subsections (1B) and (1C) shall cease to have effect.
- (5) In section 442 of that Act (power to investigate company ownership), omit subsection (2).

**659 Resignation, removal and replacement of inspectors**

After section 446B of the Companies Act 1985 (c. 6) (inserted by section 658 above) insert –

*“Resignation, removal and replacement of inspectors*

**446C Resignation and revocation of appointment** 5

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

**446D Appointment of replacement inspectors**

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

**660 Power to obtain information from former inspectors etc**

- (1) After section 446D of the Companies Act 1985 (inserted by section 659 above) insert – 30

*“Power to obtain information from former inspectors etc*

**446E Obtaining information from former inspectors etc**

- (1) This section applies to a person who was appointed as an inspector under this Part – 35
  - (a) who has resigned, or
  - (b) whose appointment has been revoked.
- (2) This section also applies to an inspector to whom the Secretary of State has given a direction under section 446B (termination of investigation).

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

## 661 Power to require production of documents

- (1) In section 434 of the Companies Act 1985 (production of documents and evidence to inspectors), for subsection (6) substitute –
- “(6) In this section “document” includes information recorded in any form.
- (7) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document –
- (a) in hard copy form, or
  - (b) in a form from which a hard copy can be readily obtained. 35
- (8) An inspector may take copies of or extracts from a document produced in pursuance of this section.”.
- (2) In section 447 of the Companies Act 1985 (power of Secretary of State to require documents and information), for subsection (9) substitute –
- “(9) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document –
- 40

- (a) in hard copy form, or
- (b) in a form from which a hard copy can be readily obtained.”.

## 662 Disqualification orders: consequential amendments

In section 8(1A)(b)(i) of the Company Directors Disqualification Act 1986 (c. 46) (disqualification after investigation of company: meaning of “investigative material”)— 5

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

## PART 24

UK COMPANIES NOT FORMED UNDER THE COMPANIES ACTS 10

### CHAPTER 1

COMPANIES NOT FORMED UNDER THE COMPANIES ACTS BUT AUTHORISED TO REGISTER

## 663 Companies authorised to register under the Companies Acts

- (1) This section applies to—
  - (a) any company that was in existence on 2nd November 1862 (including any company registered under the Joint Stock Companies Acts), and 15
  - (b) any company formed after that date (whether before or after the commencement of this Act)—
    - (i) in pursuance of an Act of Parliament other than the Companies Acts or any of the former Companies Acts, 20
    - (ii) in pursuance of letters patent, or
    - (iii) that is otherwise duly constituted according to law.
- (2) Any such company may on making application register under this Act.
- (3) Subject to the following provisions, it may register as an unlimited company, as a company limited by shares or as a company limited by guarantee. 25
- (4) A company having the liability of its members limited by Act of Parliament or letters patent—
  - (a) may not register under this section unless it is a joint stock company, and
  - (b) may not register under this section as an unlimited company or a company limited by guarantee. 30
- (5) A company that is not a joint stock company may not register under this section as a company limited by shares.
- (6) The registration of a company under this section is not invalid by reason that it has taken place with a view to the company’s being wound up. 35

## 664 Definition of “joint stock company”

- (1) For the purposes of section 663 (companies authorised to register under the Companies Acts) “joint stock company” means a company—

- (a) having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and
  - (b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons. 5
- (2) Such a company when registered with limited liability under the Companies Acts is deemed a company limited by shares.
- 665 Power to make provision by regulations**
- (1) The Secretary of State may make provision by regulations – 10
    - (a) for and in connection with registration under section 663 (companies not formed under the Companies Acts but authorised to register), and
    - (b) as to the application to companies so registered of the provisions of the Companies Acts.
  - (2) Without prejudice to the generality of that power, regulations under this section may make provision corresponding to any provision formerly made by Chapter 2 of Part 22 of the Companies Act 1985 (c. 6). 15
  - (3) Regulations under this section are subject to negative resolution procedure.
- 666 Application of provisions to existing companies**
- The provisions of the Companies Acts apply to companies registered but not formed under any of the former Companies Acts in the same manner as they apply to companies registered under section 663. 20

## CHAPTER 2

### UNREGISTERED COMPANIES

- 667 Unregistered companies** 25
- (1) This section applies to bodies corporate incorporated in and having a principal place of business in the United Kingdom, other than –
    - (a) bodies incorporated by, or registered under, a public general Act of Parliament;
    - (b) bodies not formed for the purpose of carrying on a business that has for its object the acquisition of gain by the body or its individual members; 30
    - (c) bodies for the time being exempted from this section by direction of the Secretary of State;
    - (d) open-ended investment companies.
  - (2) The Secretary of State may make provision by regulations applying specified provisions of the Companies Acts to all, or any specified description of, the bodies to which this section applies. 35
  - (3) The regulations may provide that the specified provisions of the Companies Acts apply subject to any specified limitations and to such adaptations and modifications (if any) as may be specified. 40
  - (4) This section does not –



- (a) repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which provisions of the Companies Acts are applied by regulations under this section, or
  - (b) restrict the power of Her Majesty to grant a charter in lieu or supplementary to any such charter. 5
- But in relation to any such body the operation of any such enactment, charter or instrument is suspended in so far as it is inconsistent with any of those provisions as they apply for the time being to that body.
- (5) Regulations under this section are subject to negative resolution procedure. 10

## PART 25

### OVERSEAS COMPANIES

#### *Introductory*

#### **668 Overseas companies**

In the Companies Acts an “overseas company” means a company incorporated outside the United Kingdom. 15

#### *Registration of particulars*

#### **669 Duty to register particulars**

- (1) The Secretary of State may make provision by regulations requiring an overseas company – 20
  - (a) to deliver to the registrar for registration a return containing specified particulars, and
  - (b) to deliver to the registrar with the return specified documents.
- (2) The regulations –
  - (a) must, in the case of a company other than a Gibraltar company, require the company to register particulars if the company opens a branch in the United Kingdom, and 25
  - (b) may, in the case of a Gibraltar company, require the company to register particulars if the company opens a branch in the United Kingdom, and 30
  - (c) may, in any case, require the registration of particulars in such other circumstances as may be specified.
- (3) In subsection (2) –
  - “branch” means a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC); 35
  - “Gibraltar company” means a company incorporated in Gibraltar.
- (4) The regulations may provide that where a company has registered particulars under this section and any alteration is made –
  - (a) in the specified particulars, or
  - (b) in any document delivered with the return, 40

the company must deliver to the registrar for registration a return containing specified particulars of the alteration.

- (5) The regulations may make provision –
- (a) requiring the return under this section to be delivered for registration to the registrar for a specified part of the United Kingdom, and 5
  - (b) requiring it to be so delivered before the end of a specified period.
- (6) The regulations may make different provision according to –
- (a) the place where the company is incorporated, and
  - (b) the activities carried on (or proposed to be carried on) by it.
- This is without prejudice to the general power to make different provision for different cases. 10
- (7) Regulations under this section are subject to affirmative resolution procedure.

#### 670 Registered name of overseas company

- (1) Regulations under section 669 (duty to register particulars) must require an overseas company that is required to register particulars to state the name under which it proposes to be registered. 15
- (2) This may be –
- (a) the company’s corporate name (that is, its name under the law of the country or territory in which it is incorporated) or
  - (b) an alternative name specified in accordance with section 671. 20
- (3) Subject only to subsection (5), an EEA company may always be registered under its corporate name.
- (4) In any other case, the following provisions of Part 5 (a company’s name) apply in relation to the registration of the name of an overseas company –
- (a) section 54 (prohibited names); 25
  - (b) sections 55 to 57 (sensitive words and expressions);
  - (c) section 66 (inappropriate use of indications of company type or legal form);
  - (d) sections 67 to 74 (similarity to other names);
  - (e) section 75 (provision of misleading information etc); 30
  - (f) section 76 (misleading indication of activities).
- (5) The provisions of section 58 (permitted characters etc) apply in every case.
- (6) Any reference in the provisions mentioned in subsection (4) or (5) to a change of name shall be read as a reference to registration of a different name under section 671. 35

#### 671 Registration under alternative name

- (1) An overseas company that is required to register particulars under section 669 may at any time deliver to the registrar for registration a statement specifying a name, other than its corporate name, under which it proposes to carry on business in the United Kingdom. 40
- (2) An overseas company that has registered an alternative name may at any time deliver to the registrar of companies for registration a statement specifying a different name under which it proposes to carry on business in the United

Kingdom (which may be its corporate name or a further alternative) in substitution for the name previously registered.

- (3) The name by which an overseas company is for the time being registered under this section is, for all purposes of the law applying in the United Kingdom, deemed to be the company's corporate name. 5
- (4) This does not –
- (a) affect the references in this section or section 670 to the company's corporate name,
  - (b) affect any rights or obligation of the company, or
  - (c) render defective any legal proceedings by or against the company. 10
- (5) Any legal proceedings that might have been continued or commenced against the company by its corporate name, or any name previously registered under this section, may be continued or commenced against it by its name for the time being so registered.

*Other requirements* 15

#### **672 Accounts and reports: general**

- (1) The Secretary of State may make provision by regulations requiring an overseas company that is required to register particulars under section 669 –
- (a) to prepare the like accounts and directors' report, and
  - (b) cause to be prepared such an auditor's report, 20
- as would be required if the company were formed and registered under this Act.
- (2) The regulations may for this purpose apply, with or without modifications, all or any of the provisions of –
- Part 15 (accounts and reports), and
  - Part 16 (audit). 25
- (3) The Secretary of State may make provision by regulations requiring an overseas company to deliver to the registrar copies of –
- (a) the accounts and reports prepared in accordance with the regulations, or
  - (b) the accounts and reports that it is required to prepare and have audited under the law of the country in which it is incorporated. 30
- (4) Regulations under this section are subject to negative resolution procedure.

#### **673 Accounts and reports: credit or financial institutions**

- (1) This section applies to a credit or financial institution – 35
- (a) that is incorporated or otherwise formed outside the United Kingdom and Gibraltar,
  - (b) whose head office is outside the United Kingdom and Gibraltar, and
  - (c) that has a branch in the United Kingdom.
- (2) In subsection (1) "branch" means a place of business that forms a legally dependent part of the institution and conducts directly all or some of the operations inherent in its business. 40

- (3) The Secretary of State may make provision by regulations requiring an institution to which this section applies –
- (a) to prepare the like accounts and directors’ report, and
  - (b) cause to be prepared such an auditor’s report,
- as would be required if the institution were a company formed and registered under this Act. 5
- (4) The regulations may for this purpose apply, with or without modifications, all or any of the provisions of –
- Part 15 (accounts and reports), and
  - Part 16 (audit). 10
- (5) The Secretary of State may make provision by regulations requiring an institution to which this section applies to deliver to the registrar copies of –
- (a) accounts and reports prepared in accordance with the regulations, or
  - (b) accounts and reports that it is required to prepare and have audited under the law of the country in which the institution has its head office. 15
- (6) Regulations under this section are subject to negative resolution procedure.

#### 674 Trading disclosures

- (1) The Secretary of State may by regulations make provision requiring overseas companies carrying on business in the United Kingdom –
- (a) to display specified information in specified locations, 20
  - (b) to state specified information in specified descriptions of document or communication, and
  - (c) to provide specified information on request to those they deal with in the course of their business.
- (2) The regulations – 25
- (a) shall in every case require disclosure of the name under which the company is registered to carry on business in the United Kingdom, and
  - (b) may make provision as to the manner in which any specified information is to be displayed, stated or provided.
- (3) The regulations may make provision corresponding to that made by – 30
- section 83 (civil consequences of failure to make required disclosure), and
  - section 84 (criminal consequences of failure to make required disclosure).
- (4) Regulations under this section are subject to affirmative resolution procedure.

#### 675 Other returns etc

- (1) This section applies to overseas companies that are required to register particulars under section 669. 35
- (2) The Secretary of State may make provision by regulations requiring the delivery to the registrar of returns –
- (a) by a company to which this section applies that – 40
    - (i) is being wound up, or
    - (ii) becomes or ceases to be subject to insolvency proceedings, or an arrangement or composition or any analogous proceedings;
  - (b) by the liquidator of a company to which this section applies.

- (3) The regulations may specify –
  - (a) the circumstances in which a return is to be made,
  - (b) the particulars to be given in it, and
  - (c) the period within which it is to be made.
- (4) The Secretary of State may make provision by regulations requiring notice to be given to the registrar of the appointment in relation to a company to which this section applies of a judicial factor (in Scotland). 5
- (5) The regulations may include provision corresponding to any provision made by section 766 of this Act (duty to notify registrar of certain appointments).
- (6) Regulations under this section are subject to affirmative resolution procedure. 10

### *Supplementary*

#### **676 Offences**

- (1) Regulations under this Part may specify the person or persons responsible for complying with any specified requirement of the regulations.
- (2) Regulations under this Part may make provision for offences, including provision as to –
  - (a) the person or persons liable in the case of any specified contravention of the regulations, and
  - (b) circumstances that are, or are not, to be a defence on a charge of such an offence. 20
- (3) The regulations must not provide –
  - (a) for imprisonment, or
  - (b) for the imposition on summary conviction of a fine exceeding level 5 on the standard scale and, in the case of continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 25
- (4) In this section “specified” means specified in the regulations.

#### **677 Disclosure of individual’s residential address: non-disclosure certificate**

Where regulations under section 669 (overseas companies: duty to register particulars) require an overseas company to register particulars of an individual’s usual residential address, they must contain provision corresponding to that made by Chapter 8 of Part 10 (directors’ residential addresses: non-disclosure certificates). 30

#### **678 Requirement to identify persons to accept service of documents**

Regulations under section 669 (overseas companies: duty to register particulars) must require an overseas company to specify one or more persons resident in the United Kingdom who are authorised to accept service of documents on the company’s behalf. 35

#### **679 Duty to give notice of ceasing to have registrable presence in the UK**

- (1) If an overseas company whose particulars are registered under section 669 ceases to have any connection with the United Kingdom by virtue of which it 40

is required to register particulars under that section, it must give notice of that fact to the registrar.

- (2) If a company fails to comply with this section an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default. 5
- (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.

#### **680 Registrar to whom returns, notices etc to be delivered**

- (1) This section applies to an overseas company that is required to register or has registered particulars under section 669 in more than one part of the United Kingdom. 10
- (2) The Secretary of State may provide by regulations that, in the case of such a company, anything authorised or required to be delivered to the registrar under this Part is to be delivered –
  - (a) to the registrar for each part of the United Kingdom in which the company is required to register or has registered particulars, or 15
  - (b) to the registrar for such part or parts of the United Kingdom as may be specified in or determined in accordance with the regulations.
- (3) Regulations under this section are subject to negative resolution procedure.

### **PART 26** 20

#### THE REGISTRAR OF COMPANIES

##### *The registrar*

#### **681 The registrar**

- (1) There shall continue to be –
  - (a) a registrar of companies for England and Wales, 25
  - (b) a registrar of companies for Scotland, and
  - (c) a registrar of companies for Northern Ireland.
- (2) The registrars shall be appointed by the Secretary of State.
- (3) In the Companies Acts “the registrar of companies” and “the registrar” mean the registrar of companies for England and Wales, Scotland or Northern Ireland, as the case may require. 30
- (4) References in the Companies Acts to registration in a particular part of the United Kingdom are to registration by the registrar for that part of the United Kingdom.

#### **682 The registrar’s functions** 35

- (1) The registrar shall continue –
  - (a) to perform the functions conferred on the registrar by provisions of the Companies Acts and other enactments, and

- (b) to perform such functions on behalf of the Secretary of State, in relation to the registration of companies or other matters, as the Secretary of State may from time to time direct.
- (2) References in this Act to the functions of the registrar are to functions within subsection (1)(a) or (b). 5

### 683 The registrar’s official seal

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

### 684 Fees payable to registrar

- (1) The Secretary of State may make provision by regulations requiring the payment to the registrar of fees in respect of – 10
  - (a) the performance of any of the registrar’s functions, or
  - (b) the provision by the registrar of services or facilities for purposes incidental to, or otherwise connected with, the performance of any of the registrar’s functions. 15
- (2) The matters for which fees may be charged include –
  - (a) the performance of a duty imposed on the registrar or the Secretary of State,
  - (b) the receipt of documents delivered to the registrar, and
  - (c) the inspection, or provision of copies, of documents kept by the registrar. 20
- (3) The regulations may –
  - (a) provide for the amount of the fees to be fixed by or determined under the regulations;
  - (b) provide for different fees to be payable in respect of the same matter in different circumstances; 25
  - (c) specify the person by whom any fee payable under the regulations is to be paid;
  - (d) specify when and how fees are to be paid.
- (4) Regulations under this section are subject to negative resolution procedure. 30
- (5) In respect of the performance of functions or the provision of services or facilities –
  - (a) for which fees are not provided for by regulations, or
  - (b) in circumstances other than those for which fees are provided for by regulations, 35the registrar may determine from time to time what fees (if any) are chargeable.
- (6) Fees received by the registrar are to be paid into the Consolidated Fund.

### *Certificates of incorporation*

### 685 Public notice of issue of certificate of incorporation

- (1) The registrar must cause to be published – 40
  - (a) in the Gazette, or

- (b) in accordance with section 734 (alternative means of giving public notice),  
notice of the issue by the registrar of any certificate of incorporation of a company.
- (2) The notice must state the name of the company and the date of issue of the certificate. 5
- (3) This section applies to a certificate of incorporation issued under –  
(a) section 80 (change of name),  
(b) section 88 (Welsh companies), or  
(c) any provision of Part 7 (re-registration), 10  
as well as to the certificate issued on a company’s formation.
- 686 Right to certificate of incorporation**
- Any person may require the registrar to provide him with a copy of any certificate of incorporation of a company, signed by the registrar or authenticated by the registrar’s seal. 15
- Registered numbers*
- 687 Company’s registered numbers**
- (1) The registrar shall allocate to every company a number, which shall be known as the company’s registered number.
- (2) Companies’ registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may determine. 20
- (3) The registrar may on adopting a new form of registered number make such changes of existing registered numbers as appear necessary.
- (4) A change of a company’s registered number has effect from the date on which the company is notified by the registrar of the change. 25
- (5) For a period of three years beginning with that date any requirement to disclose the company’s registered number imposed by regulations under section 82 or section 674 (trading disclosures) is satisfied by the use of either the old number or the new.
- (6) In this section “company” includes – 30  
(a) an overseas company whose particulars have been registered under section 669, other than a company that appears to the registrar not to be required to register particulars under that section;  
(b) any body to which any provision of the Companies Acts applies by virtue of regulations under section 667 (unregistered companies). 35
- 688 Registered numbers of branches of overseas company**
- (1) The registrar shall allocate to every branch of an overseas company whose particulars are registered under section 669 a number, which shall be known as the branch’s registered number.
- (2) Branches’ registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may determine. 40



- (3) The registrar may on adopting a new form of registered number make such changes of existing registered numbers as appear necessary.
- (4) A change of a branch's registered number has effect from the date on which the company is notified by the registrar of the change.
- (5) For a period of three years beginning with that date any requirement to disclose the branch's registered number imposed by regulations under section 674 (trading disclosures) is satisfied by the use of either the old number or the new. 5

*Delivery of documents to the registrar*

**689 Registrar's requirements** 10

- (1) The registrar may impose requirements as to the form, authentication and manner of delivery of documents required or authorised to be delivered to the registrar under any enactment.
- (2) Where a document required or authorised to be delivered to the registrar under any enactment is required – 15
  - (a) to be certified as an accurate translation, or
  - (b) to be certified as a correct copy or verified,the registrar may impose requirements as to the person, or description of person, by whom the certificate or verification is to be given.  
The power conferred by subsection (1) is exercisable in relation to the certificate or verification as if it were a separate document. 20
- (3) As regards the form of the document, the registrar may –
  - (a) require the contents of the document to be in a standard form;
  - (b) impose requirements for the purpose of enabling the document to be scanned or copied. 25
- (4) As regards authentication, the registrar may –
  - (a) require the document to be authenticated by a particular person or a person of a particular description;
  - (b) specify the means of authentication of any information which any relevant enactment or the registrar requires to be authenticated; 30
  - (c) require the document to contain or be accompanied by the name or registered number of the company to which it relates (or both).
- (5) As regards the manner of delivery, the registrar may specify requirements as to –
  - (a) the physical form of the document (for example, hard copy or electronic form); 35
  - (b) the means to be used for delivering the document (for example, by post or electronic means);
  - (c) the address to which the document is to be sent;
  - (d) in the case of a document to be delivered by electronic means, the hardware and software to be used, and technical specifications (for example, matters relating to protocol, security, anti-virus protection or encryption). 40

- (6) The registrar must secure that as from 1st January 2007 all documents subject to the Directive disclosure requirements (see section 699) may be delivered to the registrar by electronic means.
- (7) The power conferred by this section does not authorise the registrar to require documents to be delivered by electronic means (see section 690). 5
- (8) Requirements imposed under this section must not be inconsistent with requirements imposed by any enactment for the purposes of the provision requiring or authorising the delivery of the document to the registrar.

#### **690 Power to require delivery by electronic means**

- (1) The Secretary of State may make regulations requiring documents that are authorised or required to be delivered to the registrar to be delivered by electronic means. 10
- (2) Any such requirement to deliver documents by electronic means is effective only if registrar's rules have been published with respect to the detailed requirements for such delivery. 15
- (3) Regulations under this section are subject to affirmative resolution procedure.

#### **691 Agreement for delivery by electronic means**

- (1) The registrar may agree with a company that documents relating to the company that are required or authorised to be delivered to the registrar – 20
- (a) will be delivered by electronic means, except as provided for in the agreement, and
- (b) will conform to such requirements as may be specified in the agreement or specified by the registrar in accordance with the agreement.
- (2) An agreement under this section may relate to all or any description of documents to be delivered to the registrar. 25
- (3) Documents in relation to which an agreement is in force under this section must be delivered in accordance with the agreement.

#### **692 Document not delivered until received**

- (1) A document is not delivered to the registrar until it is received by the registrar.
- (2) Provision may be made by registrar's rules as to when a document is to be regarded as received. 30

#### *Defective delivery*

#### **693 Defective delivery**

- (1) A document delivered to the registrar is not properly delivered unless all the following requirements are met – 35
- (a) the requirements of the provision under which the document is to be delivered to the registrar as regards –
- (i) the contents of the document, and
- (ii) form, authentication and manner of delivery;

- (b) any applicable requirements under –
    - section 689 (registrar’s requirements),
    - section 690 (power to require delivery by electronic means), or
    - section 691 (agreement for delivery by electronic means);
  - (c) any requirements of this Part as to the language in which the document is drawn up and delivered or as to its being accompanied on delivery by a certified translation into English; 5
  - (d) in so far as it consists of or includes names and addresses, any requirements of this Part as to permitted characters, letters or symbols or as to its being accompanied on delivery by a certificate as to the transliteration of any element; 10
  - (e) any requirement of regulations under section 703 (use of unique identifiers);
  - (f) any requirements as regards payment of a fee in respect of its receipt by the registrar. 15
- (2) The registrar may accept (and register) a document that does not comply with those requirements.
- (3) The acceptance (or registration) of such a document by the registrar does not affect –
- (a) any liability for failure to comply with the requirements of the provision under which the document is delivered to the registrar as regards the contents of the document; 20
  - (b) the continuing obligation to comply with the requirements mentioned in subsection (1);
  - (c) the exercise of the registrar’s powers under – 25
    - section 694 (informal correction), or
    - section 697 (notice to remedy defective delivery).
- (4) No objection may be taken to the legal effect of any such action taken by the registrar on the ground that the requirements mentioned in subsection (1) above are not met. 30

#### **694 Informal correction of document**

- (1) A document delivered to the registrar may be corrected by the registrar if it appears to the registrar to be incomplete or internally inconsistent.
- (2) This power is exercisable only –
- (a) on instructions, and 35
  - (b) if the company has given (and has not withdrawn) its consent to instructions being given under this section.
- (3) The following requirements must be met as regards the instructions –
- (a) the instructions must be given in response to an enquiry by the registrar; 40
  - (b) the registrar must be satisfied that the person giving the instructions is authorised to do so –
    - (i) by the person by whom the document was delivered, or
    - (ii) by the company to which the document relates;
  - (c) the instructions must meet any requirements of registrar’s rules as to – 45
    - (i) the form and manner in which they are given, and

- (ii) authentication.
- (4) The company’s consent to instructions being given under this section (and any withdrawal of such consent) –
- (a) may be in hard copy or electronic form, and
  - (b) must be notified to the registrar. 5
- (5) This section applies in relation to documents delivered under Part 12 of the Companies Act 1985 (c. 6) (registration of charges) by a person other than the company as if the references to the company were to the company or the person by whom the document was delivered.
- (6) A document that is corrected under this section is treated, for the purposes of any enactment relating to its delivery, as having been delivered when the correction is made. 10
- 695 Voluntary replacement of document previously delivered**
- (1) The registrar may accept a replacement for a document previously delivered that did not comply with the requirements for proper delivery. 15
- (2) A replacement document must not be accepted unless the registrar is satisfied that it is delivered by –
- (a) the person by whom the original document was delivered, or
  - (b) the company to which the original document relates,
- and that it complies with the requirements for proper delivery. 20
- (3) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the replacement in a form and manner enabling it to be associated with the original.
- (4) For the purposes of this section the requirements for proper delivery are those listed in section 693(1). 25
- 696 Exclusion of unnecessary material**
- (1) If a document delivered to the registrar contains unnecessary material that in the opinion of the registrar ought to be excluded from the register, the provisions of –
- section 693(2) to (4) (defective delivery),
  - section 694 (informal correction of document), and
  - section 697 (registrar’s notice to remedy defective delivery),
- apply as they apply to a document that does not meet the requirements listed in section 693(1) (requirements for proper delivery). 30
- (2) “Unnecessary material” means material that –
- (a) is not needed to comply with an obligation under any enactment, and
  - (b) is not specifically authorised to be delivered to the registrar.
- (3) For this purpose an obligation to deliver a document of a particular description, or conforming to certain requirements, is regarded as not extending to anything that is not needed for a document of that description or, as the case may be, conforming to those requirements. 40

### **697 Registrar’s notice to remedy defective delivery**

- (1) This section applies where a document delivered to the registrar –
  - (a) does not meet the requirements for proper delivery, and
  - (b) is not either corrected under section 694 (informal correction by registrar) or replaced under section 695 (voluntary replacement).The “requirements for proper delivery” are those mentioned in section 693(1). 5
- (2) The registrar may give notice –
  - (a) to the person by whom the document was delivered (if the identity, and name and address of that person are known), or
  - (b) to the company to which the document relates (if notice cannot be given under paragraph (a) and the identity of that company is known). 10
- (3) The notice must –
  - (a) state in what respects the document does not appear to meet the requirements for proper delivery,
  - (b) state the date on which it is issued, and 15
  - (c) require a replacement document complying with the requirements for proper delivery to be delivered to the registrar within 14 days after that date.
- (4) If no replacement document is delivered within the period specified, an offence is committed by – 20
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 25

#### *Public notice of receipt of certain documents*

### **698 Public notice of receipt of certain documents**

- (1) The registrar must cause to be published –
  - (a) in the Gazette, or 30
  - (b) in accordance with section 734 (alternative means of giving public notice),notice of the receipt by the registrar of any document subject to the Directive disclosure requirements (see section 699).
- (2) The notice must state the name of the company, the description of document and the date of receipt. 35

### **699 Documents subject to Directive disclosure requirements**

- (1) The documents subject to the “Directive disclosure requirements” are as follows.  
The requirements referred to are those of Article 3 of the First Company Law Directive (68/151/EEC), as amended, extended and applied. 40
- (2) In the case of every company –

<i>A. Constitutional documents</i>	
1. The company’s memorandum and articles.	
2. Any amendment of the company’s articles (including every resolution or agreement required to be embodied in or annexed to copies of the company’s articles issued by the company).	5
3. After any amendment of the company’s articles, the text of the articles as amended.	
4. Any notice of a change of the company’s name.	
<i>B. Directors</i>	
1. The statement of proposed officers required on formation of the company.	10
2. Notification of any change among the company’s directors.	
3. Notification of any change in the particulars of directors required to be delivered to the registrar.	
<i>C. Accounts, reports and returns</i>	
1. All documents required to be delivered to the registrar under section 424 (annual accounts and reports).	15
2. The company’s annual return.	
<i>D. Registered office</i>	
Notification of any change of the company’s registered office.	
<i>E. Winding up</i>	
1. Copy of any winding-up order in respect of the company.	20
2. Notice of the appointment of liquidators.	
3. Order for the dissolution of a company on a winding up.	
4. Return by a liquidator of the final meeting of a company on a winding up.	
(3) In the case of a public company –	25
<i>Share capital</i>	
1. Copy of any resolution under section 548 or 549 of this Act (disapplication of pre-emption rights).	
2. Copy of any report under section 103 or 104 of the Companies Act 1985 (c. 6) as to the value of a non-cash asset.	30
3. Any statement of compliance delivered under section 535 of this Act (statement that company meets conditions for issue of trading certificate).	
4. Notification (under section 122 of the Companies Act 1985) of the redemption of shares.	
5. Statement or notice delivered under section 128 of that Act (registration of particulars of special rights).	35
6. Any return of allotment.	
<i>Mergers and divisions</i>	
1. Copy of any draft of the terms of a scheme required to be delivered to the registrar under paragraph 2(1) of Schedule 15B to the Companies Act 1985.	40
2. Copy of any order under section 425(2) or 427 of that Act in respect of a compromise or arrangement to which section 427A of that Act applies.	
(4) In the case of an overseas company, such particulars, returns and other documents required to be delivered under Part 25 of this Act as may be specified by the Secretary of State by regulations.	45
(5) Regulations under subsection (4) are subject to negative resolution procedure.	

## 700 Effect of failure to give public notice

- (1) A company is not entitled to rely against other persons on the happening of any event to which this section applies unless –
- (a) the event has been officially notified at the material time, or
  - (b) the company shows that the person concerned knew of the event at the material time. 5
- (2) The events to which this section applies are –
- (a) an amendment of the company’s articles,
  - (b) a change among the company’s directors,
  - (c) (as regards service of any document on the company) a change of the company’s registered office, 10
  - (d) the making of a winding-up order in respect of the company, or
  - (e) the appointment of a liquidator in a voluntary winding up of the company.
- (3) If the material time falls – 15
- (a) on or before the 15th day after the date of official notification, or
  - (b) where the 15th day was not a working day, on or before the next day that was,
- the company is not entitled to rely on the happening of the event as against a person who shows that he was unavoidably prevented from knowing of the event at that time. 20
- (4) “Official notification” means –
- (a) in relation to an amendment of the company’s articles, notification in accordance with section 698 (public notice of receipt by registrar of certain documents) of the amendment and the amended text of the articles; 25
  - (b) in relation to anything else stated in a document subject to the Directive disclosure requirements, notification of that document in accordance with that section;
  - (c) in relation to the appointment of a liquidator in a voluntary winding up, notification of that event in accordance with section 109 of the Insolvency Act 1986 (c. 45) or Article 95 of the Insolvency (Northern Ireland) Order 1989 (S.I.1989/2405 (N.I. 19)). 30

### *The register*

## 701 The register

- (1) The registrar shall continue to keep records of – 35
- (a) the information contained in documents delivered to the registrar under any enactment,
  - (b) certificates of incorporation issued by the registrar, and
  - (c) certificates issued by the registrar under section 401(2) or 418 of the Companies Act 1985 (c. 6) (certificates of registration of charge). 40
- (2) The records relating to companies are referred to collectively in the Companies Acts as “the register”.

- (3) Information deriving from documents subject to the Directive disclosure requirements (see section 699) that are delivered to the registrar on or after 1st January 2007 must be kept by the registrar in electronic form.
- (4) Subject to that, information contained in documents delivered to the registrar may be recorded and kept in any form the registrar thinks fit, provided it is possible to inspect it and produce a copy of it. 5  
This is sufficient compliance with any duty of the registrar to keep, file or register the document or to record the information contained in it.
- (5) The records kept by the registrar must be such that information relating to a company is associated with that company, in such manner as the registrar may determine, so as to enable all the information relating to the company to be retrieved. 10

## 702 Annotation of the register

- (1) The registrar must place a note in the register recording – 15
- (a) the date on which a document is delivered to the registrar;
  - (b) if a document is corrected under section 694, the nature and date of the correction;
  - (c) if a document is replaced (whether or not material derived from it is removed), the fact that it has been replaced and the date of delivery of the replacement; 20
  - (d) if material is removed –
    - (i) what was removed (giving a general description of its contents),
    - (ii) under what power, and
    - (iii) the date on which that was done.
- (2) The Secretary of State may make provision by regulations – 25
- (a) authorising or requiring the registrar to annotate the register in such other circumstances as may be specified in the regulations, and
  - (b) as to the contents of any such annotation.
- (3) No annotation is required in the case of a document that by virtue of section 693 (defective delivery) is not registered. 30
- (4) A note may be removed if it no longer serves any useful purpose.
- (5) Any duty or power of the registrar with respect to annotation of the register is subject to the court's power under section 716 (powers of court on ordering removal of material from the register) to direct – 35
- (a) that a note be removed from the register, or
  - (b) that no note shall be made of the removal of material that is the subject of the court's order.
- (6) Notes placed in the register in accordance with subsection (1), or in pursuance of regulations under subsection (2), are part of the register for all purposes of the Companies Acts. 40
- (7) Regulations under this section are subject to negative resolution procedure.



### 703 Allocation of unique identifiers

- (1) The Secretary of State may make provision for the use, in connection with the register, of reference numbers (“unique identifiers”) to identify each person who –
  - (a) is a director of a company, 5
  - (b) is secretary (or a joint secretary) of a public company,
  - (c) in the case of an overseas company whose particulars are registered under section 669, holds any such position as may be specified for the purposes of this section by regulations under that section, or
  - (d) who with a view to being appointed – 10
    - (i) a director of a company, or
    - (ii) to any such position as is mentioned in paragraph (c), applies for a certificate of non-disclosure in respect of his usual residential address.
- (2) The regulations may – 15
  - (a) provide that a unique identifier may be in such form, consisting of one or more sequences of letters or numbers, as the registrar may from time to time determine;
  - (b) make provision for the allocation of unique identifiers by the registrar;
  - (c) require there to be included, in any specified description of documents delivered to the registrar, as well as a statement of the person’s name – 20
    - (i) a statement of the person’s unique identifier, or
    - (ii) a statement that the person has not been allocated a unique identifier;
  - (d) enable the registrar to take steps where a person appears to have more than one unique identifier to discontinue the use of all but one of them. 25
- (3) The regulations may contain provision for the application of the scheme in relation to persons appointed, and documents registered, before the commencement of this Act.
- (4) The regulations may make different provision for different descriptions of person and different descriptions of document. 30
- (5) Regulations under this section are subject to affirmative resolution procedure.

### 704 Preservation of original documents

- (1) The originals of documents delivered to the registrar in hard copy form must be kept for three years after they are received by the registrar, after which they may be destroyed provided the information contained in them has been recorded in the register. 35  
This is subject to section 708(3) (extent of obligation to retain material not available for public inspection).
- (2) The registrar is under no obligation to keep the originals of documents delivered in electronic form, provided the information contained in them has been recorded in the register. 40
- (3) This section applies to documents held by the registrar when this section comes into force as well as to documents subsequently received.

**705 Records relating to companies that have been dissolved etc**

- (1) This section applies where –
- (a) a company is dissolved,
  - (b) an overseas company ceases to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 669, or 5
  - (c) a credit or financial institution ceases to be within section 673 (overseas institutions required to file accounts with the registrar).
- (2) At any time after two years from the date on which it appears to the registrar that – 10
- (a) the company has been dissolved,
  - (b) the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 669, or
  - (c) the credit or financial institution has ceased to be within section 673 15  
(overseas institutions required to file accounts with the registrar),  
the registrar may direct that records relating to the company or institution may be removed to the Public Record Office or, as the case may be, the Public Records Office for Northern Ireland.
- (3) Records in respect of which such a direction is given shall be disposed of under the enactments relating to that Office and the rules made under them. 20
- (4) In subsection (1)(a) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.
- (5) This section does not extend to Scotland.

*Inspection etc of the register* 25

**706 Inspection of the register**

- (1) Any person may inspect the register.
- (2) The right of inspection extends to the originals of documents delivered to the registrar in hard copy form if, and only if, the record kept by the registrar of the contents of the document is illegible or unavailable. 30  
The period for which such originals are to be kept is limited by section 704(1).
- (3) This section has effect subject to section 708 (material not available for public inspection).

**707 Right to copy of material on the register**

- (1) Any person may require a copy of any material on the register. 35
- (2) The fee for any such copy of material derived from a document subject to the Directive disclosure requirements (see section 699), whether in hard copy or electronic form, must not exceed the administrative cost of providing it.
- (3) This section has effect subject to section 708 (material not available for public inspection). 40

## 708 Material not available for public inspection

- (1) The following material must not be made available by the registrar for public inspection –
  - (a) a protected address as stated –
    - (i) on an application for a non-disclosure certificate or on a notification of change of address where such a certificate is in force, or 5
    - (ii) on any other document where a residential address would normally be required to be notified;
  - (b) any application or other document delivered to the registrar under Chapter 8 of Part 10 (directors' residential addresses: non-disclosure certificates) or any corresponding provisions of regulations under section 669 (overseas companies); 10
  - (c) the contents of any document sent to the registrar containing views expressed pursuant to section 57 (comments on proposal by company to use certain words or expressions in company name); 15
  - (d) any document received by the registrar in connection with the giving or withdrawal of consent under section 694 (informal correction of documents);
  - (e) any court order under section 715 (rectification of the register under court order) that the court has directed under section 716 (powers of court on ordering removal of material from the register) is not to be made available for public inspection; 20
  - (f) the contents of –
    - (i) any instrument creating or evidencing a charge and delivered to the registrar under section 395 of the Companies Act 1985 (c. 6) (registration of company charges: England and Wales or Northern Ireland), or 25
    - (ii) any certified copy of an instrument creating or evidencing a charge and delivered to the registrar under section 410 of that Act (registration of company charges: Scotland); 30
  - (g) any e-mail address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone;
  - (h) the contents of any documents held by the registrar pending a decision of the registrar of community interest companies under section 36 or 38 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (decision on eligibility for registration as community interest company) and that the registrar is not later required to record; 35
  - (i) any other material excluded from public inspection by or under any other enactment. 40
- (2) A restriction applying by reference to material deriving from a particular description of document does not affect the availability for public inspection of the same information contained in material derived from another description of document in relation to which no such restriction applies. 45
- (3) Material to which this section applies need not be retained by the registrar for longer than appears to the registrar reasonably necessary for the purposes for which the material was delivered to the registrar.

**709 Form of application for inspection or copy**

- (1) The registrar may specify the form and manner in which application is to be made for –
- (a) inspection under section 706, or
  - (b) a copy under section 707. 5
- (2) As from 1st January 2007, applications in respect of documents subject to the Directive disclosure requirements may be submitted to the registrar in hard copy or electronic form, as the applicant chooses.
- This does not affect the registrar’s power under subsection (1) above to impose requirements in respect of other matters. 10

**710 Form and manner in which copies to be provided**

- (1) The following provisions apply as regards the form and manner in which copies are to be provided under section 707.
- (2) As from 1st January 2007, copies of documents subject to the Directive disclosure requirements must be provided in hard copy or electronic form, as the applicant chooses. 15
- This is subject to the following proviso.
- (3) The registrar is not obliged by subsection (2) to provide copies in electronic form of a document that was delivered to the registrar in hard copy form if –
- (a) the document was delivered to the registrar on or before 31st December 1996, or
  - (b) the document was delivered to the registrar on or before 31st December 2006 and ten years or more elapsed between the date of delivery and the date of receipt of the first application for a copy on or after 1st January 2007. 20
- (4) Subject to the preceding provisions of this section, the registrar may determine the form and manner in which copies are to be provided. 25

**711 Certification of copies as accurate**

- (1) Copies provided under section 707 in hard copy form must be certified as true copies unless the applicant dispenses with such certification. 30
- (2) Copies so provided in electronic form must not be certified as true copies unless the applicant expressly requests such certification.
- (3) A copy provided under section 707, certified by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of the original document, is in all legal proceedings admissible in evidence – 35
- (a) as of equal validity with the original document, and
  - (b) as evidence (in Scotland, sufficient evidence) of any fact stated in the original document of which direct oral evidence would be admissible.
- (4) The Secretary of State may make provision by regulations as to the manner in which such a certificate is to be provided in a case where the copy is provided in electronic form. 40
- (5) Except in the case of documents that are subject to the Directive disclosure requirements (see section 699), copies provided by the registrar may, instead of

being certified in writing to be an accurate record, be sealed with the registrar's official seal.

#### **712 Issue of process for production of records kept by the registrar**

- (1) No process for compelling the production of a record kept by the registrar shall issue from any court except with the permission of the court. 5
- (2) Any such process shall bear on it a statement that it is issued with the permission of the court.

#### *Correction or removal of material on the register*

#### **713 Registrar's notice to resolve inconsistency on the register**

- (1) Where it appears to the registrar that the information contained in a document delivered to the registrar is inconsistent with other information on the register, the registrar may give notice to the company to which the document relates –
  - (a) stating in what respects the information contained in it appears to be inconsistent with other information on the register, and
  - (b) requiring the company to take steps to resolve the inconsistency. 15
- (2) The notice must –
  - (a) state the date on which it is issued, and
  - (b) require the delivery to the registrar, within 14 days after that date, of such replacement or additional documents as may be required to resolve the inconsistency. 20
- (3) If the necessary documents are not delivered within the period specified, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale. 25

#### **714 Administrative removal of material from the register**

- (1) The registrar may remove from the register anything that there was power, but no duty, to include. 30
- (2) This power is exercisable, in particular, so as to remove –
  - (a) unnecessary material within the meaning of section 696, and
  - (b) material derived from a document that has been replaced under –
    - section 695 (voluntary replacement of document previously delivered),
    - section 697 (notice to remedy defective delivery), or
    - section 713 (notice to remedy inconsistency on the register).
- (3) This section does not authorise the removal from the register of –
  - (a) anything whose registration has had legal consequences in relation to the company as regards – 40

- (i) its formation,
  - (ii) a change of name,
  - (iii) its re-registration,
  - (iv) its becoming or ceasing to be a community interest company,
  - (v) a reduction of capital, 5
  - (vi) a change of registered office,
  - (vii) the registration of a charge, or
  - (viii) its dissolution;
  - (b) an address that is a person’s registered address for the purposes of section 757 (service of documents on directors, secretaries and others). 10
- In these cases the remedy is to apply to the court (see section 715).
- (4) On or before removing any material under this section (otherwise than at the request of the company) the registrar must give notice –
    - (a) to the person by whom the material was delivered (if the identity, and name and address of that person are known), or 15
    - (b) to the company to which the material relates (if notice cannot be given under paragraph (a) and the identity of that company is known).
  - (5) The notice must –
    - (a) state what material the registrar proposes to remove, or has removed, and on what grounds, and 20
    - (b) state the date on which it is issued.

### 715 Rectification of the register under court order

- (1) The registrar shall remove from the register any material –
  - (a) that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the company, 25
  - or
  - (b) that a court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged,
 and that the court directs should be removed from the register.
- (2) The court order must specify what is to be removed from the register and indicate where on the register it is. 30
- (3) The court must not make an order for the removal from the register of anything the registration of which had legal consequences as mentioned in section 714(3) unless satisfied –
  - (a) that the presence of the material on the register has caused, or may cause, damage to the company, and 35
  - (b) that the company’s interest in removing the material outweighs any interest of other persons in the material continuing to appear on the register.
- (4) Where in such a case the court does make an order for removal, it may make such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register. 40
- (5) A copy of the court’s order must be sent to the registrar for registration.
- (6) This section does not apply where the court has other, specific powers to deal with the matter, for example under – 45

- (a) the provisions of Part 15 of this Act relating to the revision of defective accounts and reports, or
- (b) section 404 or 420 of the Companies Act 1985 (rectification of the register of charges).

**716 Powers of court on ordering removal of material from the register** 5

- (1) Where the court makes an order for the removal of anything from the register under section 715 (rectification of the register), it may give directions under this section.
- (2) It may direct that any note on the register that is related to the material that is the subject of the court’s order shall be removed from the register. 10
- (3) It may direct that its order shall not be available for public inspection as part of the register.
- (4) It may direct –
  - (a) that no note shall be made on the register as a result of its order, or
  - (b) that any such note shall be restricted to such matters as may be specified by the court. 15
- (5) The court shall not give any direction under this section unless it is satisfied –
  - (a) that –
    - (i) the presence on the register of the note or, as the case may be, of an unrestricted note, or 20
    - (ii) the availability for public inspection of the court’s order, may cause damage to the company, and
  - (b) that the company’s interest in non-disclosure outweighs any interest of other persons in disclosure.

*The registrar’s index of company names* 25

**717 The registrar’s index of company names**

- (1) The registrar of companies must keep an index of the names of the companies and other bodies to which this section applies.  
This is “the registrar’s index of company names”.
- (2) This section applies to – 30
  - (a) companies as defined by section 1 of this Act;
  - (b) companies registered under the Companies Acts by virtue of section 663 (companies not formed under the Companies Acts but able to register);
  - (c) any body to which any provision of the Companies Acts applies by virtue of regulations under section 667 (unregistered companies); and 35
  - (d) overseas companies that have registered particulars with the registrar under Part 25, other than companies that appear to the registrar not to be required to do so.
- (3) This section also applies to – 40
  - (a) limited partnerships registered in the United Kingdom;
  - (b) limited liability partnerships incorporated in the United Kingdom;

- (c) European Economic Interest Groupings registered in the United Kingdom;
  - (d) open-ended investment companies authorised in the United Kingdom;
  - (e) societies registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)). 5
- (4) The Secretary of State may by order amend subsection (3) –
- (a) by the addition of any description of body;
  - (b) by the deletion of any description of body.
- (5) Any such order is subject to negative resolution procedure. 10

### 718 Right to inspect index

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

### 719 Power to amend enactments relating to bodies other than companies

- (1) The Secretary of State may by regulations amend the enactments relating to any description of body for the time being within section 717(3) (bodies other than companies whose names are to be entered in the registrar’s index), so as to – 15
- (a) require the registrar to be provided with information as to the names of bodies registered, incorporated, authorised or otherwise regulated under those enactments, and 20
  - (b) make provision in relation to such bodies corresponding to that made by –
    - section 67 (company name not to be the same as another in the index), and
    - sections 68 and 69 (power to direct change of company name in case of similarity to existing name). 25
- (2) Regulations under this section are subject to affirmative resolution procedure.

*Language requirements: translation*

### 720 Application of language requirements

- (1) The provisions listed below apply to all documents required to be delivered to the registrar under any provision of – 30
- (a) the Companies Acts, or
  - (b) the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) The Secretary of State may make provision by regulations applying all or any of the listed provisions, with or without modifications, in relation to documents delivered to the registrar under any other enactment. 35
- (3) The provisions are –
- section 721 (documents to be drawn up and delivered in English),
  - section 722 (documents relating to Welsh companies), 40
  - section 723 (documents that may be drawn up and delivered in other languages),



section 725 (certified translations).

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

#### **721 Documents to be drawn up and delivered in English**

- (1) The general rule is that all documents required to be delivered to the registrar must be drawn up and delivered in English. 5
- (2) This is subject to—  
section 722 (documents relating to Welsh companies) and  
section 723 (documents that may be drawn up and delivered in other languages).

#### **722 Documents relating to Welsh companies** 10

- (1) Documents relating to a Welsh company may be drawn up and delivered to the registrar in Welsh.
- (2) On delivery to the registrar any such document must be accompanied by a certified translation into English, unless it is—  
(a) of a description excepted from that requirement by regulations made by the Secretary of State, or 15  
(b) in a form prescribed in Welsh (or partly in Welsh and partly in English) by virtue of section 26 of the Welsh Language Act 1993 (c. 38).
- (3) Where a document is properly delivered to the registrar in Welsh without a certified translation into English, the registrar must obtain such a translation if the document is to be available for public inspection. 20  
The translation is treated as if delivered to the registrar in accordance with the same provision as the original.
- (4) A Welsh company may deliver to the registrar a certified translation into Welsh of any document in English that relates to the company and is or has been delivered to the registrar. 25
- (5) Section 723 (which requires certified translations into English of documents delivered to the registrar in another language) does not apply to a document relating to a Welsh company that is drawn up and delivered in Welsh.

#### **723 Documents that may be drawn up and delivered in other languages** 30

- (1) Documents to which this section applies may be drawn up and delivered to the registrar in a language other than English, but when delivered to the registrar they must be accompanied by a certified translation into English.
- (2) This section applies to—  
(a) agreements required to be forwarded to the registrar under Chapter 3 of Part 3 of this Act (agreements affecting the company's constitution); 35  
(b) documents required to be delivered under section 378(2)(e) or section 379(2)(f) (company included in accounts of larger group: required to deliver copy of group accounts);  
(c) instruments or copy instruments required to be delivered under Part 12 of the Companies Act 1985 (c. 6) (registration of charges); 40

- (d) documents of any other description specified in regulations made by the Secretary of State.
- (3) Regulations under this section are subject to negative resolution procedure.

#### 724 Voluntary filing of translations

- (1) A company may deliver to the registrar one or more certified translations of any document relating to the company that is or has been delivered to the registrar. 5
- (2) The Secretary of State may by regulations specify –
- (a) the languages, and
- (b) the descriptions of document, 10
- in relation to which this facility is available.
- (3) The regulations must provide that it is available as from 1st January 2007 –
- (a) in relation to all the official languages of the European Union, and
- (b) in relation to all documents subject to the Directive disclosure requirements (see section 699). 15
- (4) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the translation in a form and manner enabling it to be associated with the original.
- (5) Regulations under this section are subject to negative resolution procedure. 20
- (6) This section does not apply where the original document was delivered to the registrar before this section came into force.

#### 725 Certified translations

- (1) In this Part a “certified translation” means a translation certified to be a correct translation. 25
- (2) In the case of any discrepancy between the original language version of a document and a certified translation –
- (a) the company may not rely on the translation as against a third party, but
- (b) a third party may rely on the translation unless the company shows that the third party had knowledge of the original. 30
- (3) A “third party” means a person other than the company or the registrar.

#### *Language requirements: transliteration*

#### 726 Transliteration of names and addresses: permitted characters

- (1) Names and addresses in a document delivered to the registrar must contain only letters, characters and symbols (including accents and other diacritical marks) that are permitted. 35
- (2) The Secretary of State may make provision by regulations –
- (a) as to the letters, characters and symbols (including accents and other diacritical marks) that are permitted, and 40

- (b) permitting or requiring the delivery of documents in which names and addresses have not been transliterated into a permitted form.
  - (3) Regulations under this section are subject to negative resolution procedure.
- 727 Transliteration of names and addresses: voluntary transliteration into Roman characters** 5
- (1) Where a name or address is or has been delivered to the registrar in a permitted form using other than Roman characters, the company may deliver to the registrar a transliteration into Roman characters.
  - (2) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the transliteration in a form and manner enabling it to be associated with the original. 10
- 728 Transliteration of names and addresses: certification**
- (1) The Secretary of State may make provision by regulations requiring the certification of transliterations and prescribing the form of certification. 15
  - (2) Different provision may be made for compulsory and voluntary transliterations.
  - (3) Regulations under this section are subject to negative resolution procedure.
- Supplementary provisions*
- 729 General false statement offence** 20
- (1) It is an offence for a person knowingly or recklessly –
    - (a) to deliver or cause to be delivered to the registrar, for any purpose of the Companies Acts, a document, or
    - (b) to make to the registrar, for any such purpose, a statement, that is misleading, false or deceptive in a material particular. 25
  - (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 –
      - (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). 35
- 730 Enforcement of company’s filing obligations**
- (1) This section applies where a company has made default in complying with any obligation under the Companies Acts –
    - (a) to deliver a document to the registrar, or
    - (b) to give notice to the registrar of any matter. 40

- 
- (2) The registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the obligation.
- (3) If the company fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the company, may apply to the court for an order directing the company, and any specified officer of it, to make good the default within a specified time. 5
- (4) The court’s order may provide that all costs (in Scotland, expenses) of or incidental to the application are to be borne by the company or by any officers of it responsible for the default.
- (5) This section does not affect the operation of any enactment making it an offence, or imposing a civil penalty, for the default. 10
- 731 Application of provisions about documents and delivery**
- (1) In this Part—
- (a) “document” means information recorded in any form, and
- (b) references to delivering a document include forwarding, lodging, registering, sending, producing or submitting it or (in the case of a notice) giving it. 15
- (2) Except as otherwise provided, this Part applies in relation to the supply to the registrar of information otherwise than in documentary form as it applies in relation to the delivery of a document. 20
- 732 Provisions requiring copies of court orders to be delivered to the registrar**
- In the following provisions (which require an office copy of certain court orders to be delivered to the registrar) for “an office copy” substitute “a copy”—
- section 425(3) of the Companies Act 1985 (c. 6) (order sanctioning compromise or arrangement); 25
- section 427(5) of that Act (order sanctioning compromise or arrangement);
- section 201(4) of the Insolvency Act 1986 (c. 45) and Article 166(4) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (order deferring date at which dissolution of company after winding up is to take effect). 30
- 733 Supplementary provisions relating to electronic communications**
- (1) Registrar’s rules may require a company to give any necessary consents to the use of electronic means for communications by the registrar to the company as a condition of making use of any facility to deliver material to the registrar by electronic means. 35
- (2) A document that is required to be signed by the registrar or authenticated by the registrar’s seal shall, if sent by electronic means, be authenticated in such manner as may be specified by registrar’s rules.
- 734 Alternative to publication in the Gazette** 40
- (1) Notices that would otherwise need to be published by the registrar in the Gazette may instead be published by such means as may from time to time be

- approved by the registrar in accordance with regulations made by the Secretary of State.
- (2) The Secretary of State may make provision by regulations as to what alternative means may be approved.
- (3) The regulations may, in particular— 5
- (a) require the use of electronic means;
  - (b) require the same means to be used— 10
    - (i) for all notices or for all notices of specified descriptions, and
    - (ii) whether the company is registered in England and Wales, Scotland or Northern Ireland;
  - (c) impose conditions as to the manner in which access to the notices is to be made available.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) Before starting to publish notices by means approved under this section the registrar must publish at least one notice to that effect in the Gazette. 15
- (6) Nothing in this section prevents the registrar from giving public notice both in the Gazette and by means approved under this section.  
In that case, the requirement of public notice is met when notice is first given by either means.
- 735 Registrar’s rules 20**
- (1) Where any provision of this Part enables the registrar to make provision, or impose requirements, as to any matter, the registrar may make such provision or impose such requirements by means of rules under this section.  
This is without prejudice to the making of such provision or the imposing of such requirements by other means. 25
- (2) Registrar’s rules—
- (a) may make different provision for different cases, and
  - (b) may allow the registrar to disapply or modify any of the rules.
- (3) The registrar must— 30
- (a) publicise the rules in a manner appropriate to bring them to the notice of persons affected by them, and
  - (b) make copies of the rules available to the public (in hard copy or electronic form).
- 736 Payments into the Consolidated Fund**
- Nothing in the Companies Acts or any other enactment as to the payment of receipts into the Consolidated Fund shall be read as affecting the operation in relation to the registrar of section 3(1) of the Government Trading Funds Act 1973 (c. 63). 35
- 737 Contracting out of registrar’s functions**
- (1) Where by virtue of an order made under section 69 of the Deregulation and Contracting Out Act 1994 (c. 40) a person is authorised by the registrar to accept delivery of any class of documents that are under any enactment to be 40

delivered to the registrar, the registrar may direct that documents of that class shall be delivered to a specified address of the authorised person.

Any such direction must be printed and made available to the public (with or without payment).

- (2) A document of that class that is delivered to an address other than the specified address is treated as not having been delivered. 5
- (3) Registrar’s rules are not subordinate legislation for the purposes of section 71 of the Deregulation and Contracting Out Act 1994 (c. 40) (functions excluded from contracting out).

### **738 Application of Part to overseas companies** 10

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

### **739 Application of Part to functions under other enactments**

- (1) Unless the context otherwise requires, the provisions of this Part apply in relation to functions of the registrar under the following enactments as they apply to functions under the Companies Acts. 15
- (2) The enactments are—
- the Joint Stock Companies Acts;
  - the Newspaper Libel and Registration Act 1881 (c. 60); 20
  - the Limited Partnerships Act 1907 (c. 24);
  - section 53 of the Industrial and Provident Societies Act 1965 (c. 12) or, for Northern Ireland, section 62 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));
  - the Insolvency Act 1986 (c. 45) or, for Northern Ireland, the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)); 25
  - section 12 of the Statutory Water Companies Act 1991 (c. 58);
  - sections 3, 4, 6, 63 and 64 of, and Schedule 1 to, the Housing Act 1996 (c. 52) or, for Northern Ireland, Articles 3 and 16 to 32 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)); 30
  - sections 2, 4 and 26 of the Commonwealth Development Corporation Act 1999 (c. 20);
  - Part 6 and section 366 of the Financial Services and Markets Act 2000 (c. 8);
  - the Limited Liability Partnerships Act 2000 (c. 12);
  - section 14 of the Insolvency Act 2000 (c. 39) or, for Northern Ireland, Article 11 of the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6)); 35
  - section 121 of the Land Registration Act 2002 (c. 9);
  - section 842 of this Act.
- (3) The provisions applied by this section do not include sections 720 to 725 (language requirements). 40

## PART 27

### OFFENCES UNDER THE COMPANIES ACTS

#### *Liability of officer in default*

#### **740 Liability of officer in default**

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

#### **741 Liability of company as officer in default**

- (1) Where a company is an officer of another company, it does not commit an offence as an officer in default unless one of its officers is in default.
- (2) Where any such offence is committed by a company the officer in question also commits the offence and is liable to be proceeded against and punished accordingly. 20
- (3) In this section “officer” and “in default” have the meanings given by section 740.

#### **742 Application to bodies other than companies**

- (1) Section 740 (liability of officers in default) applies to a body other than a company as it applies to a company. 25
- (2) As it applies in relation to a body corporate other than a company –
  - (a) the reference to a director of the company shall be read as referring –
    - (i) where the body’s affairs are managed by its members, to a member of the body, 30
    - (ii) in any other case, to any corresponding officer of the body, and
  - (b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the body.
- (3) As it applies in relation to a partnership –
  - (a) the reference to a director of the company shall be read as referring to a member of the partnership, and 35
  - (b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the partnership.
- (4) As it applies in relation to an unincorporated body other than a partnership –
  - (a) the reference to a director of the company shall be read as referring – 40

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

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*Offences under the Companies Act 1985*

**743 Amendments of the Companies Act 1985**

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

*General provisions*

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**744 Meaning of “daily default fine”**

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

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**745 Consents required for certain prosecutions**

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- (1) This section applies to proceedings for an offence under any of the following provisions –
  - section 441, 443 or 631 of this Act (offences of unauthorised disclosure of information);
  - section 635 of this Act (failure to comply with rules about takeover bid documents);
  - section 448, 449, 450, 451 or 453A of the Companies Act 1985 (offences in connection with company investigations);
  - section 455 of that Act (offence of attempting to evade restrictions on shares).
- (2) No such proceedings are to be brought in England and Wales except by or with the consent of –
  - (a) in the case of an offence under –
    - (i) section 441, 443 or 631 of this Act,
    - (ii) section 635 of this Act, or
    - (iii) section 448, 449, 450, 451 or 453A of the Companies Act 1985, the Secretary of State or the Director of Public Prosecutions;
  - (b) in the case of an offence under section 455 of the Companies Act 1985, the Secretary of State.
- (3) No such proceedings are to be brought in Northern Ireland except by or with the consent of –

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- (a) in the case of an offence under –
    - (i) section 441, 443 or 631 of this Act,
    - (ii) section 635 of this Act, or
    - (iii) section 448, 449, 450, 451 or 453A of the Companies Act 1985 (c. 6),  
the Secretary of State or the Director of Public Prosecutions for Northern Ireland;
  - (b) in the case of an offence under section 455 of the Companies Act 1985, the Secretary of State.
- 746 Summary proceedings: venue** 10
- (1) Summary proceedings for any offence under the Companies Acts may be taken –
    - (a) against a body corporate, at any place at which the body has a place of business, and
    - (b) against any other person, at any place at which he is for the time being. 15
  - (2) This is without prejudice to any jurisdiction exercisable apart from this section.
- 747 Summary proceedings: time limit for proceedings**
- (1) An information relating to an offence under the Companies Acts that is triable by a magistrates’ court in England and Wales may be so tried if it is laid –
    - (a) at any time within three years after the commission of the offence, and 20
    - (b) within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.
  - (2) Summary proceedings in Scotland for an offence under the Companies Acts –
    - (a) must not be commenced after the expiration of three years from the commission of the offence; 25
    - (b) subject to that, may be commenced at any time –
      - (i) within twelve months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to his knowledge, or 30
      - (ii) where such evidence was reported to him by the Secretary of State, within twelve months after the date on which it came to the knowledge of the latter.
- Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date when proceedings deemed to be commenced) applies for the purposes of this subsection as for the purposes of that section. 35
- (3) A magistrates’ court in Northern Ireland has jurisdiction to hear and determine a complaint charging the commission of a summary offence under the Companies Acts provided that the complaint is made –
    - (a) within three years from the time when the offence was committed, and 40
    - (b) within twelve months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.

(4)	For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his notice is conclusive evidence.	5
<b>748</b>	<b>Legal professional privilege</b>	
	In proceedings against a person for an offence under the Companies Acts, nothing in those Acts is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).	10
<b>749</b>	<b>Proceedings against unincorporated bodies</b>	
(1)	Proceedings for an offence under the Companies Acts alleged to have been committed by an unincorporated body must be brought in the name of the body (and not in that of any of its members).	
(2)	For the purposes of such proceedings—	15
	(a) any rules of court relating to the service of documents have effect as if the body were a body corporate, and	
	(b) the following provisions apply as they apply in relation to a body corporate—	
	(i) in England and Wales, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43),	20
	(ii) in Scotland, sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46),	
	(iii) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Article 166 of and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).	25
(3)	A fine imposed on an unincorporated body on its conviction of an offence under the Companies Acts must be paid out of the funds of the body.	30
<b>750</b>	<b>Imprisonment on summary conviction in England and Wales: transitory provision</b>	
(1)	This section applies to any provision of the Companies Acts that provides that a person guilty of an offence is liable on summary conviction in England and Wales to imprisonment for a term not exceeding twelve months.	35
(2)	In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” substitute “six months”.	
<i>Supplementary</i>		
<b>751</b>	<b>Transitional provision</b>	40
	The provisions of this Part do not apply to offences committed before the commencement of the relevant provision.	

## PART 28

### COMPANIES: SUPPLEMENTARY PROVISIONS

#### *Company records*

#### **752 Meaning of “company records”**

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

#### **753 Form of company records**

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

#### **754 Regulations about inspection of records and provision of copies**

- (1) The Secretary of State may make provision by regulations as to the obligations of a company that is required by any provision of the Companies Acts –
  - (a) to make available for inspection any company records, or 30
  - (b) to provide copies of any company records.
- (2) A company that fails to comply with the regulations is treated as having refused inspection or, as the case may be, having failed to provide a copy.
- (3) The regulations may –
  - (a) make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection, and 35
  - (b) define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies. 40

- (4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.
- (5) Nothing in any provision of this Act or in the regulations shall be read as preventing a company –
- (a) from affording more extensive facilities than are required by the regulations, or
  - (b) where a fee may be charged, from charging a lesser fee than that prescribed or none at all.
- (6) Regulations under this section are subject to negative resolution procedure.
- 755 Duty to take precautions against falsification** 10
- (1) Where company records are kept otherwise than in bound books, adequate precautions must be taken –
- (a) to guard against falsification, and
  - (b) to facilitate the discovery of falsification.
- (2) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default. 15
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 20
- (4) This section does not apply to the documents required to be kept under –
- (a) section 207 (copy of director’s service contract or memorandum of its terms); or
  - (b) section 215 (qualifying third party indemnity provision).
- Service addresses* 25
- 756 Service of documents on company**
- (1) A document may be served on a company registered under the Companies Acts by leaving it at, or sending it by post to, the company’s registered office.
- (2) A document may be served on an overseas company whose particulars are registered under section 669 – 30
- (a) by leaving it at, or sending it by post to, the registered address of any person resident in the United Kingdom who is authorised to accept service of documents on the company’s behalf, or
  - (b) if there is no such person, or if any such person refuses service or service cannot for any other reason be effected, by leaving it at or sending by post to any place of business of the company in the United Kingdom. 35
- (3) Where a company registered in Scotland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company’s principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company. 40

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

**757 Service of documents on directors, secretaries and others**

- (1) A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address. 5
- (2) This section applies to –
  - (a) a director or secretary of a company;
  - (b) in the case of an overseas company whose particulars are registered under section 669, a person holding any such position as may be specified for the purposes of this section by regulations under that section; 10
  - (c) a person appointed in relation to a company as –
    - (i) a judicial factor (in Scotland),
    - (ii) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or 15
    - (iii) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
- (3) This section applies whatever the purpose of the document in question. 20  
It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.
- (4) For the purposes of this section a person's "registered address" means –
  - (a) in the case of an individual in relation to whom a non-disclosure certificate is in force in respect of his usual residential address, the service address shown in the register kept by the registrar of companies; 25
  - (b) in any other case, any address for the time being shown in relation to that person in that register. 30
- (5) If notice of a change of that address is given to the registrar, a person may validly serve a document at the address previously registered until the end of the period of 14 days beginning with the date on which notice of the change is registered.
- (6) Service may not be effected by virtue of this section at an address – 35
  - (a) if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment;
  - (b) in the case of a person holding any such position as is mentioned in subsection (2)(b), if the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 669. 40
- (7) Nothing in this section shall be read as affecting any enactment or rule of law under which permission is required for service out of the jurisdiction. 45

**758 Service addresses**

- (1) In the Companies Acts a “service address”, in relation to a person, means an address at which documents may be effectively served on that person.
- (2) The Secretary of State may by regulations specify conditions with which a service address must comply. 5
- (3) Regulations under this section are subject to negative resolution procedure.

*Sending or supplying documents or information***759 The company communications provisions**

- (1) The provisions of sections 760 to 764 (“the company communications provisions”) have effect for the purposes of any provision of the Companies Acts that authorises or requires documents or information to be sent or supplied by or to a company. 10
- (2) As regards documents or information to be sent or supplied to the registrar the company communications provisions have effect subject to the provisions of Part 26. 15

**760 Sending or supplying documents or information**

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

**761 Construction of provisions about documents or information sent or supplied**

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

## 762 Right to hard copy version

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

## 763 Requirement of authentication

A document or information sent or supplied by a person to a company is sufficiently authenticated –

- (a) in the case of a document or information in hard copy form, if it is signed by the person sending or supplying it; 20
- (b) in the case of a document or information in electronic form –
  - (i) if the identity of the sender is confirmed in a manner specified by the company, or
  - (ii) if, where no such manner has been specified by the company, the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement. 25

## 764 Interpretation of company communications provisions

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

documents or information being sent or supplied by or to the directors of a company acting on behalf of the company.

#### 765 Deemed delivery of documents and information sent by post or electronic means

- |     |  |    |
|-----|--|----|
| (1) | This section applies in relation to documents and information sent or supplied by a company.   | 5  |
| (2) | Where –  |    |
|     | (a) the document or information was sent by post (whether in hard copy or electronic form) to an address in the United Kingdom, and  |    |
|     | (b) the company is able to show that it was properly addressed, prepaid and posted,  | 10 |
|     | it is deemed to have been received by the intended recipient 48 hours after it was sent.   |    |
| (3) | Where –  |    |
|     | (a) the document or information is sent or supplied by electronic means, and   | 15 |
|     | (b) the company is able to show that it was properly addressed,  |    |
|     | it is deemed to have been received by the intended recipient 48 hours after it was sent.   |    |
| (4) | In calculating a period of hours for the purposes of this section, no account shall be taken of any part of a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in the part of the United Kingdom in which the company is registered. | 20 |
| (5) | This section has effect –  |    |
|     | (a) subject to any contrary provision in the Companies Acts, and   | 25 |
|     | (b) in its application to documents or information sent by a company to its members, subject to any contrary provision in the company's articles.  |    |

#### *Notice of appointment of certain officers*

#### 766 Duty to notify registrar of certain appointments etc

- |     |  |    |
|-----|--|----|
| (1) | Notice must be given to the registrar of the appointment in relation to a company of –   | 30 |
|     | (a) a judicial factor (in Scotland),   |    |
|     | (b) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or  |    |
|     | (c) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).   | 35 |
| (2) | The notice must be given –   |    |
|     | (a) in the case of appointment of a judicial factor, by the judicial factor;   |    |
|     | (b) in the case of appointment of a receiver and manager under section 18 of the Charities Act 1993, by the Charity Commissioners;   | 40 |
|     | (c) in the case of appointment of a manager under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, by the Regulator of Community Interest Companies. |    |



- (3) The notice must specify an address at which service of documents (including legal process) may be effected on the person appointed.  
Notice of a change in the address for service may be given to the registrar by the person appointed.
- (4) Where notice has been given under this section of the appointment of a person, notice must also be given to the registrar of the termination of the appointment. This notice must be given by the person specified in subsection (2). 5

**767 Offence of failure to give notice**

- (1) If a judicial factor fails to give notice of his appointment in accordance with section 766 he commits an offence. 10
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

*Courts and legal proceedings* 15

**768 Meaning of “the court”**

- (1) Except as otherwise provided, in the Companies Acts “the court” means –
- (a) in England and Wales, the High Court or (subject to subsection (3)) a county court;
  - (b) in Scotland, the Court of Session or the sheriff court; 20
  - (c) in Northern Ireland, the High Court.
- (2) The provisions of the Companies Acts conferring jurisdiction on “the court” as defined above have effect subject to any enactment or rule of law relating to the allocation of jurisdiction or distribution of business between courts in any part of the United Kingdom. 25
- (3) The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order –
- (a) exclude a county court from having jurisdiction under the Companies Acts, and
  - (b) for the purposes of that jurisdiction attach that court’s district, or any part of it, to another county court. 30
- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise his functions under subsection (3).

**769 Power of court to grant relief in certain cases** 35

- (1) If in proceedings for negligence, default, breach of duty or breach of trust against –
- (a) an officer of a company, or
  - (b) a person employed by a company as auditor (whether he is or is not an officer of the company), 40
- it appears to the court hearing the case that the officer or person is or may be liable but that he acted honestly and reasonably, and that having regard to all

- the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.
- (2) If any such officer or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust – 5
- (a) he may apply to the court for relief, and
- (b) the court has the same power to relieve him as it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought. 10
- (3) Where the directors of a company take advantage of the exemption conferred by section 464 (small charities: accountant’s report in lieu of audit) this section, as it has effect in England and Wales and Northern Ireland, applies in relation to a person appointed as reporting accountant as it applies in relation to a person appointed to act as auditor. 15
- (4) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant (in Scotland, the defender) ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case from the jury and forthwith direct judgment to be entered for the defendant (in Scotland, grant decree of absolvitor) on such terms as to costs (in Scotland, expenses) or otherwise as the judge may think proper. 20

## PART 29

### COMPANIES: INTERPRETATION 25

#### *Meaning of "undertaking" and related expressions*

#### 770 Meaning of “undertaking” and related expressions

- (1) In the Companies Acts “undertaking” means –
- (a) a body corporate or partnership, or
- (b) an unincorporated association carrying on a trade or business, with or without a view to profit. 30
- (2) In the Companies Acts references to shares –
- (a) in relation to an undertaking with a share capital, are to allotted shares;
- (b) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and 35
- (c) 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. 40
- (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.

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. 5
- (5) In the Companies Acts “group undertaking”, in relation to an undertaking, means an undertaking which is—
  - (a) a parent undertaking or subsidiary undertaking of that undertaking, or
  - (b) a subsidiary undertaking of any parent undertaking of that undertaking. 10

### 771 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—
  - (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—
    - (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. 25
- (3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking—
  - (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. 30
- (4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—
  - (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. 35
- (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. 40
- (6) Schedule 8 contains provisions explaining expressions used in this section and otherwise supplementing this section.

*Other definitions***772 Hard copy and electronic form and related expressions**

- (1) The following provisions apply for the purposes of the Companies Acts.
- (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. 5  
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 –  
(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). 10  
References to electronic copy have a corresponding meaning.
- (4) A document or information is sent or supplied by electronic means if it is –  
(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 15  
(b) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.  
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 – 20  
(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 – 25  
(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.
- (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. 30

**773 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. 35
- (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. 40

#### 774 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.
- (2) A “significant accounting transaction” means a transaction that is required by section 364 to be entered in the company’s accounting records. 5
- (3) In determining whether or when a company is dormant, there shall be disregarded –
  - (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; 10
  - (b) any transaction consisting of the payment of –
    - (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 436 (penalty for failure to file accounts), or 15
    - (iv) a fee to the registrar for the registration of an annual return under Chapter 3 of Part 11 of the Companies Act 1985 (c. 6).
- (4) Any reference in the Companies Acts to a body corporate other than a company being dormant has a corresponding meaning.

#### 775 Meaning of “EEA State” and related expressions 20

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);

“EEA company” and “EEA undertaking” mean a company or undertaking governed by the law of an EEA State. 25

#### 776 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), 30  
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 35
- (b) the provisions of the Companies Act 1985 and the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) that are no longer in force; 40

“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). 45

*General***777 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.

**778 Minor definitions: general**

5

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; 10

“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; 15

“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); 20

“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; 25

“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; 30

“parent company” means a company that is a parent undertaking (see section 771 and Schedule 8); 35

“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));

“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. 40

**779 Index of defined expressions**

- (1) Schedule 9 contains an index of provisions defining or otherwise explaining expressions used in the Companies Acts. 45

- (2) For section 744A of the Companies Act 1985 (c. 6) substitute—

**“744A Index of defined expressions**

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.”

5

- (3) At the end of section 63(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (interpretation) insert—

“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.”

10

**PART 30**

COMPANIES: MINOR AMENDMENTS

**780 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.

15

- (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”;
- (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)”.

20

- (3) In section 453(1A) of that Act (investigation of overseas companies: provisions not applicable), omit paragraph (b) (which relates to section 438).

25

- (4) Nothing in this section affects proceedings brought under section 438 before the commencement of this section.

**781 Repeal of certain provisions about company directors**

The following provisions of Part 10 of the Companies Act 1985 shall cease to have effect—

30

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);  
sections 343 and 344 (special procedure for disclosure by banks).

35

**782 Repeal of requirement that certain companies publish periodical statement**

The following provisions shall cease to have effect—

section 720 of the Companies Act 1985 (certain companies to publish periodical statement), and  
Schedule 23 to that Act (form of statement under section 720).

40

**783 Repeal of requirement that Secretary of State prepare annual report**

Section 729 of the Companies Act 1985 (c. 6) (annual report to Parliament by Secretary of State on matters within the Companies Acts) shall cease to have effect.

**784 Repeal of certain provisions about company charges**

5

Part 4 of the Companies Act 1989 (c. 40) (registration of company charges), which has not been brought into force, is repealed.

**785 Access to constitutional documents of RTE and RTM companies**

- (1) The Secretary of State may by order –
- (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; 10
  - (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. 15
- (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. 20
- (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;
  - “RTM companies” has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002. 25

**PART 31**

## BUSINESS NAMES

**CHAPTER 1**

## RESTRICTED OR PROHIBITED NAMES

30

*Introductory***786 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 – 35
- (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.
- (3) The following are the permitted additions –
  - (a) in the case of an individual, his forename or initial; 5
  - (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; 10
  - (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*

**787 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 – 15
  - (a) Her Majesty’s Government, any part of the Scottish administration or Her Majesty’s Government in Northern Ireland,
  - (b) any local authority, or 20
  - (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, 25
    - (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; 30
  - “public authority” includes any person or body having functions of a public nature.
- (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. 35
- (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. 40

**788 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.
- (2) Regulations under this section are subject to approval after being made.
- (3) A person who contravenes this section commits an offence.
- (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
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale. 10
- 789 Requirement to seek comments of government department or other relevant body**
- (1) The Secretary of State may by regulations under –
- (a) section 787 (name suggesting connection with government or public authority), or 15
- (b) section 788 (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.
- (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. 20
- (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. 25
- 790 Withdrawal of Secretary of State’s approval**
- (1) This section applies to approval given for the purposes of –
- section 787 (name suggesting connection with government or public authority), or 30
- section 788 (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.
- (3) The notice must state the date as from which approval is withdrawn. 35
- Misleading names*
- 791 Name containing inappropriate indication of company type or legal form**
- (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 – 40

- 
- (a) that are associated with a particular type of company or form of organisation, or
- (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 – 5
- (a) in a specified part, or otherwise than in a specified part, of a name;
- (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. 10
- (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.
- (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. 15
- (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.
- 792 Name giving misleading indication of activities 20**
- (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.
- (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. 25
- (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. 30
- Supplementary*
- 793 Savings for existing lawful business names**
- (1) This section has effect in relation to –
- sections 786 to 790 (sensitive words or expressions), and
- section 791 (inappropriate indication of company type or legal form). 35
- (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. 40
- (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,
- 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. 5
- (4) In this section “lawful business name”, in relation to a business, means a name under which the business was carried on without contravening –
- (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 10
- (b) after this Chapter has come into force, the provisions of this Chapter.

## CHAPTER 2

### DISCLOSURE REQUIRED IN CASE OF INDIVIDUAL OR PARTNERSHIP 15

#### *Introductory*

#### **794 Application of this Chapter**

- (1) This Chapter applies to an individual or partnership carrying on business in the United Kingdom under a business name.
- (2) For the purposes of this Chapter a “business name” means a name other than – 20
- (a) in the case of an individual, his surname without any addition other than a permitted addition;
- (b) in the case of a partnership –
- (i) the surnames of all partners who are individuals, and
- (ii) the corporate names of all partners who are bodies corporate, 25  
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;
- (b) in the case of a partnership –
- (i) the forenames of individual partners or the initials of those forenames, or 30
- (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. 35

#### **795 Information required to be disclosed**

- The “information required by this Chapter” is –
- (a) in the case of an individual, his name;
- (b) in the case of a partnership, the name of each member of the partnership; 40

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.

*Disclosure requirements*

<b>796 Disclosure required: business documents etc</b>	<b>5</b>
(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—	
(a) business letters,	
(b) written orders for goods or services to be supplied to the business,	10
(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.	
This subsection has effect subject to section 797 (exemption for large partnerships if certain conditions met).	15
(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.	
(3) The Secretary of State may by regulations require that such notices be given in a specified form.	20
(4) Regulations under this section are subject to negative resolution procedure.	
<b>797 Exemption for large partnerships if certain conditions met</b>	
(1) Section 796(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.	25
(2) The conditions are that—	
(a) the partnership maintains at its principal place of business a list of the names of all the partners,	
(b) no partner’s name appears in the document, except in the text or as a signatory, and	30
(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.	
(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.	35
(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.	40
(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.

### 798 Disclosure required: business premises

- (1) A person carrying on business in the United Kingdom under a business name must, in any premises – 5
- (a) where the business is carried on, and
  - (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. 10
- (2) The Secretary of State may by regulations require that such notices be displayed in a specified form.
- (3) Regulations under this section are subject to negative resolution procedure.

#### *Consequences of failure to make required disclosure*

### 799 Criminal consequences of failure to make required disclosure 15

- (1) A person who without reasonable excuse fails to comply with the requirements of – 5
- section 796 (disclosure required: business documents etc), or
  - section 798 (disclosure required: business premises),
- commits an offence. 20
- (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. 25
- (4) References in this section to the requirements of section 796 or 798 include the requirements of regulations under that section.

### 800 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 796(1) or (2) (disclosure in business documents etc) or section 798(1) (disclosure at business premises). 30
- (2) The proceedings shall be dismissed if the defendant (in Scotland, the defender) to the proceedings shows – 35
- (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
  - (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, 40

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

- (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. 5

### CHAPTER 3

#### SUPPLEMENTARY

#### 801 Application of general provisions about offences

The provisions of sections 744 to 750 (general provisions about offences) apply in relation to offences under this Part as in relation to offences under the Companies Acts. 10

#### 802 Interpretation

In this Part—

- “business” includes a profession; 15
- “initial” includes any recognised abbreviation of a name;
- “partnership” means—
- (a) a partnership within the Partnership Act 1890 (c. 39), or
  - (b) a limited partnership registered under the Limited Partnerships Act 1907 (c. 24), 20
- or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom;
- “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 32 25

#### STATUTORY AUDITORS

### CHAPTER 1

#### INTRODUCTORY

#### 803 Main purposes of Part

The main purposes of this Part are— 30

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

#### 804 Meaning of “statutory auditor” etc 35

- (1) In this Part “statutory auditor” means—
- (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), 5
- (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, 10
- (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), 15
- (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; 20  
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. 25
- (3) In subsection (1) –
- “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 30
- (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; 35
- “industrial and provident society” means –
- (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; 40
- “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; 45
- “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.



## 805 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 –

- (a) by virtue of Chapter 2 (individuals and firms), or
- (b) by virtue of Chapter 3 (Comptroller and Auditor General, etc). 5

## CHAPTER 2

### INDIVIDUALS AND FIRMS

#### *Eligibility for appointment*

## 806 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 – 10
  - (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 816 applies (individuals retaining only 1967 Act authorisation) a person’s eligibility for appointment as a statutory auditor is restricted as mentioned in that section. 15

## 807 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 – 20
  - (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 – 25
  - (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 – 30
  - (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 – 35
  - (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 – 40
  - (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. 5
- (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. 10

*Independence requirement*

**808 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.
- (2) This subsection applies if the person is – 15
- (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 – 20
- (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 – 25
- (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). 30
- (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
- (b) a subsidiary undertaking of a parent undertaking of the audited person. 35
- (7) Regulations under subsection (4) are subject to negative resolution procedure.

**809 Effect of lack of independence**

- (1) If at any time during his term of office a statutory auditor becomes prohibited from acting by section 808(1), he must immediately – 40
- (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 –
  - (a) he acts as a statutory auditor in contravention of section 808(1), or
  - (b) he fails to give the notice mentioned in paragraph (b) of subsection (1) in accordance with that subsection. 5
- (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. 10
- (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 808(1) after the conviction. 15
- (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). 20
- (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. 25
- (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 808(1).

*Effect of appointment of a partnership* 30

## 810 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
  - (c) any other country or territory in which a partnership is not a legal person, 35is 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. 40
- (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.
- (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 5
- (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) 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 15
- (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 – 20
- (a) is eligible for appointment as a statutory auditor by virtue of this Chapter, and
- (b) is not prohibited by section 808(1) from acting as statutory auditor of the audited person.

*Supervisory bodies*

- 811 Supervisory bodies** 25
- (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 –
- (a) the eligibility of persons for appointment as a statutory auditor, and
- (b) the conduct of statutory audit work, 30
- 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.
- (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. 35
- (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. This includes rules relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part. 40
- (4) Schedule 10 has effect with respect to the recognition of supervisory bodies for the purposes of this Part.

## 812 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 – 5
- (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 – 10
- (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;
  - (c) any guidance issued by the body; 15
  - (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 – 20
- (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.
- (5) Subsection (1) does not apply – 25
- (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). 30

### *Professional qualifications*

## 813 Appropriate qualifications

- (1) A person holds an appropriate qualification for the purposes of this Chapter if and only if – 35
- (a) he holds a recognised professional qualification obtained in the United Kingdom,
  - (b) immediately before the commencement of this Chapter, he – 40
    - (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
    - (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 –

- 
- (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, 5
- (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 10
- (f) subject to any direction under section 815(5), he is regarded for the purposes of this Chapter as holding an approved overseas qualification.
- (2) A person is within this subsection if – 15
- (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,
- (b) he obtained that qualification on or after 1st January 1990 and before 1st January 1996, and 20
- (c) the Secretary of State approves his qualification as an appropriate qualification for the purposes of this Chapter.
- (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). 25
- 814 Qualifying bodies and recognised professional qualifications 30**
- (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.
- (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. 35
- 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 40
- (c) the approval of a person for the purposes of giving practical training or the withdrawal of such approval.
- (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.

## 815 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—
  - (a) persons who are qualified to audit accounts under the law of a specified foreign country, or 5
  - (b) persons who hold a specified professional qualification in accountancy obtained in a specified foreign country.
- (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), 15affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.
- (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 25
  - (b) in the case of a declaration under subsection (1)(b), some or all persons who hold a corresponding recognised professional qualification.
- (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. 30
- (6) The Secretary of State may give different directions in relation to different approved overseas qualifications. 35
- (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 40
  - (b) persons obtaining the specified professional qualification after such date as he may specify.
- (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. 45
- (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.

### **816 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. 5
- (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 363(2). 10
- (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.

*Information* 15

### **817 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 –
  - (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; 20
  - (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.
- (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. 25
- (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. 30

### **818 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.
- (2) The persons within this subsection are – 35
  - (a) any recognised supervisory body,
  - (b) any recognised qualifying body, and
  - (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. 40



*Enforcement*

**819 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, 5
  - (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, 10
- 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. 15
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

**CHAPTER 3** 20

**AUDITORS GENERAL**

*Eligibility for appointment*

**820 Auditors General: eligibility for appointment as a statutory auditor**

- (1) In this Part “Auditor General” means –
- (a) the Comptroller and Auditor General, 25
  - (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 828 (notices suspending eligibility for appointment as a statutory auditor). 30

*Conduct of audits*

**821 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. 35

*The Independent Supervisor***822 Appointment of the Independent Supervisor**

- (1) The Secretary of State must appoint a body (“the Independent Supervisor”) to discharge the function mentioned in section 823(1) (“the supervision function”). 5
- (2) An appointment under this section must be made by order.
- (3) 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—
- (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. 10
- (4) The conditions are—
- (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 (5), that that function will be exercised in accordance with any such requirements or provisions. 15
- (5) 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. 20
- (6) An order under this section is subject to negative resolution procedure.

*Supervision of Auditors General***823 Supervision of Auditors General by the Independent Supervisor**

- (1) The Independent Supervisor must supervise the performance by each Auditor General of his functions as a statutory auditor. 25
- (2) The Independent Supervisor must discharge that duty by—
- (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—
- (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; 40
  - (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;
  - (f) decides whether (and, if so, what) disciplinary action should be taken against an Auditor General to whom such a hearing related.
- (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
- (5) The Independent Supervisor must notify each Auditor General in writing of any supervision arrangements that it enters into under this section.
- (6) Supervision arrangements within subsection (3)(f) may, in particular, provide for the payment by an Auditor General of a fine to any person. 10
- (7) Any fine received by the Independent Supervisor under supervision arrangements is to be paid into the Consolidated Fund.

#### **824 Duties of Auditors General in relation to supervision arrangements**

- (1) Each Auditor General must – 15
- (a) comply with any standards of the kind mentioned in subsection (3)(a) or (b) of section 823 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 20
  - (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. 25
- (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); 30
  - (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)).
- (4) In this section “the supervision arrangements” means the arrangements entered into under section 823. 35

#### *Reporting requirement*

#### **825 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. 40
- (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;
  - (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). 5
- (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 822, this section applies with such modifications as may be specified in the order.

### *Information*

#### **826 Matters to be notified to the Independent Supervisor** 10

- (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;
  - (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. 15
- (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.
- (3) The Independent Supervisor 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 Independent Supervisor specifies or approves some other manner.

#### **827 The Independent Supervisor’s power to call for information** 25

- (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.
- (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. 30

### *Enforcement*

#### **828 Suspension notices**

- (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. 40

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- (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
  - (b) the Auditor General’s performance of his functions as a statutory auditor. 5
- (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). 10
- (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. 15
- (5) A notice under subsection (4) must –
- (a) state the reasons for which the Independent Supervisor proposes to act, and
  - (b) give particulars of the rights conferred by subsection (6). 20
- (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. 25
- (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. 30
- (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.
- (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 40
- (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.
- (11) In this section “specified” means specified in, or of a description specified in, the suspension notice in question. 45

**829 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.
- (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 – 5
  - (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 suspension notice does not make an Auditor General ineligible for appointment as a statutory auditor for the purposes of section 807 (effect of ineligibility: criminal offences). 10

**830 Compliance orders**

- (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. 15
- (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. 20
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

*Proceedings***831 Proceedings involving the Independent Supervisor** 25

- (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.
- (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. 30
- (3) Where an appointment under section 822 is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.

*Grants* 35**832 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 –

- “(ka) exercising functions of the Independent Supervisor appointed under Chapter 3 of Part 32 of the Company Law Reform Act 2006;”.

## CHAPTER 4

5

### THE REGISTER OF AUDITORS ETC

#### 833 The register of auditors

- (1) The Secretary of State must make regulations requiring the keeping of a register of –
- (a) the persons eligible for appointment as a statutory auditor, and 10
  - (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 –
- (a) his name and address, 15
  - (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, 20
  - (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
  - (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), 25
- and may require each person’s entry to contain other specified information.
- (3) The information referred to in subsection (2)(e) is –
- (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; 30
  - (b) in relation to a limited liability partnership, the name and address of each member of the partnership;
  - (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; 35
  - (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. 40
- (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 846 (delegation of Secretary of State’s functions), 45

- (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 846, with respect to the keeping of the register, or 5
  - (f) the Independent Supervisor appointed under section 822.
- (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; 10
  - (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. 15
- (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. 20
- (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. 25
- (10) Regulations under this section are subject to negative resolution procedure.

#### **834 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 – 30
- (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 35
  - (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. 40
- (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*

#### **835 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 833(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, 15  
    (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. 25
- (4) An order under this section is subject to negative resolution procedure.

#### *Duties*

#### **836 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*

#### **837 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

#### **838 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

#### **839 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.

#### **840 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 833(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 833(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

#### **841 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 832) insert –

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

### **CHAPTER 6**

#### **SUPPLEMENTARY AND GENERAL**

*Power to require second company audit* 25

#### **842 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 808(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 681.

### **843 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 842. 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 842, 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 842(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*

**844 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 833 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*

**845 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*

**846 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 847, 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 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 35
  - (b) except –
    - (i) his functions in relation to the body itself, and
    - (ii) his functions under section 822 (appointment of Independent Supervisor). 40

- (4) 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) 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 – 5
- (a) section 818 (power to call for information from recognised bodies etc);
  - (b) section 838 (power to call for information from registered third country auditors);
  - (c) section 848 (directions to comply with international obligations). 10
- (6) Any transfer of –
- (a) the function of refusing to make a declaration under section 815(1) on the grounds referred to in section 815(4) (lack of comparable treatment), or
  - (b) the function of withdrawing such a declaration under section 815(7) on those grounds, 15
- must be subject to the reservation that the function is exercisable only with the consent of the Secretary of State.
- (7) 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. 20
- (8) 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
- (9) 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,
  - (b) the constitution and proceedings of the body where it is established by the order, 30
  - (c) the exercise by the body of certain functions transferred to it, and
  - (d) other supplementary matters.
- (10) An order under this section which has the effect of transferring or resuming any functions is subject to affirmative resolution procedure.
- (11) Any other order under this section is subject to negative resolution procedure. 35

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

- (1) The Secretary of State’s power to make a delegation order under section 846 which designates an existing body is exercisable in accordance with this section.
- (2) The Secretary of State may make such a delegation order if it appears to him that – 40
- (a) the body is able and willing to exercise the functions that would be transferred by the order, and
  - (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. 45

- (3) The conditions are –
- (a) that the functions in question will be exercised effectively, and
  - (b) where the delegation order is to contain any requirements or other provisions specified under subsection (4), that those functions will be exercised in accordance with any such requirements or provisions. 5
- (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.
- (5) An existing body –
- (a) may be designated by a delegation order under section 846, and 10
  - (b) may accordingly exercise functions of the Secretary of State in pursuance of the order,
- despite 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. 15

*International obligations*

**848 Directions to comply with international obligations**

- (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 846, would be incompatible with Community obligations or any other international obligations of the United Kingdom, or 20
  - (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. 25
- (2) A direction may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient.
- (3) A direction under this section given to a body designated by order under section 846 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). 30

*General provision relating to offences*

**849 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. 35
- (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. 40



- (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

## 850 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. 10
- (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. 15
- (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. 20
- (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. 25
- (5) This section does not authorise –
- (a) in the case of proceedings in England and Wales, the trial of an information laid, 30
  - (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. 35
- (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.
- (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). 40

### 851 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*

- ### 852 Service of notices 30
- (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.

### 853 Documents in electronic form

- (1) This section applies where – 15
- (a) section 852 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*

### 854 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”.

### 855 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 771 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.

### 856 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 855(1)	
appropriate qualification	section 813	
associate	section 854	
audited person	section 804(2)	20
Auditor General	section 820(1)	
company	section 855(1)	
delegation order	section 846(1)	
director (of a body corporate)	section 855(1)	
enactment	section 878	25
established in the United Kingdom	section 855(2)	
firm	section 855(1)	
group (in relation to a body corporate)	section 855(1)	
holding company	section 855(1)	
main purposes of this Part	section 803	30
member (of a supervisory body)	section 811(2)	
obtained in the United Kingdom	section 855(2)	
officer	section 855(1)	
parent undertaking	section 855(1)	

<i>Expression</i>	<i>Provision</i>	
qualifying body	section 814(1)	
recognised, in relation to a professional qualification	section 814(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 811(4) and Schedule 10	
registered third country auditor	section 835(1)	
rules of a qualifying body	section 814(2)	10
rules of a supervisory body	section 811(3)	
statutory auditor, statutory audit and statutory audit work	section 804(1)	
subsidiary	section 855(1)	
supervisory body	section 811(1)	15
subsidiary undertaking	section 855(1)	
third country auditor, third country audit and third country audit work	section 835(1)	

*Miscellaneous and general*

- 857 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.
- 858 Consequential amendments**
- Schedule 14 contains consequential amendments relating to this Part. 30

**PART 33**

MISCELLANEOUS PROVISIONS

*Transparency and corporate governance rules*

**859 Transparency and corporate governance rules**

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), after section 90 insert – 5

*“Transparency obligations*

**90A Transparency rules**

- (1) The competent authority may make – 10
  - (a) rules (including voteholder notification rules and issuer notification rules) for the purposes of the transparency obligations directive;
  - (b) voteholder notification rules and issuer notification rules 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; 15
  - (c) rules (“extension rules”) extending voteholder notification rules or issuer notification rules under paragraph (a) or (b) so as to provide for persons who hold comparable instruments in respect of voting shares to be treated for the purposes of those rules, in the circumstances specified in the extension rules, as holding some or all of the voting rights in respect of those shares. 20
- (2) The rules which may be made under subsection (1)(a) include rules for the purpose of dealing with matters arising out of or related to any provision of the transparency obligations directive. 25
- (3) “Voteholder notification rules” are rules which make provision for voteholder information in respect of voting shares to be notified, in the circumstances specified in the rules, to the issuer or any other person specified in the rules (or both). 30
- (4) “Issuer notification rules” are rules which make provision requiring the issuer of voting shares in the circumstances specified in the rules to do one or both of the following –
  - (a) to make public any relevant information; 35
  - (b) to notify the competent authority of any relevant information.
- (5) For the purposes of this section –
  - “voteholder information”, in respect of any voting shares, is information relating to voting rights held by persons in respect of the shares; 40
  - “relevant information”, in relation to an issuer, is –
    - (a) information which is notified to the issuer in accordance with voteholder notification rules (including any extension of such rules under subsection (1)(c));

- 
- (b) information relating to the issuer’s capital;
- (c) 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); and 5
- (d) information relating to the voting rights held by the issuer in respect of those shares.
- (6) The competent authority may make public any information notified to the authority in accordance with rules under this section.
- (7) For the purposes of this section and section 90B – 10
- (a) the voting rights in respect of any voting shares are the voting rights attached to those shares, and
- (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; 15
- (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; 20
- (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.
- (8) For the purposes of this section 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). 25
- (9) For the purposes of this section two or more persons may, at the same time, each be regarded as holding the same voting rights. 30
- (10) In this section and section 90B –
- “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; 35
- “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; 40
- “UK market” means a market which is situated or operating in the United Kingdom;
- “voting shares” means shares –
- (a) to which voting rights are attached, and
- (b) which have been admitted to trading on a market (whether a regulated market or not). 45



## 90B Further provision about transparency rules

- (1) Votesholder notification rules under section 90A may only require information relating to the voting rights held by a person, in respect of voting shares in an issuer, to be notified as mentioned in subsection (3) of that section 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,held by the person. 5
- (2) Issuer notification rules under section 90A may only require information relating to the voting rights held by an issuer, in respect of voting shares in the issuer, to be made public 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,held by the issuer. 10
- (3) For the purposes of subsections (1) and (2), 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,
  - (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. 20
- (4) In subsection (3) “designated proportion” –
  - (a) in relation to subsection (1) means a proportion designated by votesholder notification rules under section 90A, and
  - (b) in relation to subsection (2) means a proportion designated by issuer notification rules under that section. 30
- (5) Without prejudice to subsection (1)(a) of section 90A, rules under subsection (1)(b) or (c) of that section may, in particular, make provision –
  - (a) specifying how the proportion of –
    - (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; 35
  - (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 section 90A(1)(c) as held, by another person in respect of voting shares in the issuer are to be regarded as held by P; 40
  - (c) specifying the nature of the information which must be included in any notification; 45
  - (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;
  - (g) specifying circumstances in which any of the requirements imposed by rules under section 90A(1)(b) or (c) does not apply.
- (6) Rules under section 90A which 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. 5
- (7) Rules under that section may make provision by reference to any provision of any rules made by the Panel on Takeovers and Mergers under Part 22 of the Company Law Reform Act 2006. 10
- (8) Section 90A and this section are without prejudice to any other power conferred by this Part to make Part 6 rules.

### 90C Competent authority’s power to call for information

- (1) The competent authority may by notice in writing given to a person within subsection (2) require him – 15
- (a) to provide specified information or information of a specified description, or
  - (b) to produce specified documents or documents of a specified description.
- (2) The persons within this subsection are – 20
- (a) an issuer of securities in respect of whom rules under section 90A have effect (“a relevant issuer”);
  - (b) a voteholder;
  - (c) an auditor of a relevant issuer or of a voteholder;
  - (d) a person who controls a voteholder; 25
  - (e) a person controlled by a voteholder;
  - (f) a director or other similar officer of a relevant issuer;
  - (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) The information or documents must be provided or produced –
- (a) before the end of such reasonable period as may be specified, and
  - (b) at such place as may be specified.
- (4) 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 section 90A. 35
- (5) The competent authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (6) The competent authority may require – 40
- (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.

- (7) 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. 5
- (8) If a person claims a lien on a document, its production under this section does not affect the lien.
- (9) 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. 10
- (10) In this section –
- “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; 15
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
  - (d) has been or is an employee of that person;
- “specified” means specified in the notice;
- “voteholder” means a person who holds voting rights in respect of any voting shares for the purposes of section 90A (transparency rules) or is treated as holding such rights by virtue of rules under subsection (1)(c) of that section. 20
- (11) A person (“A”) controls another person (“B”) if –
- (a) A holds a majority of the voting rights in B, 25
  - (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 30
  - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.

*Corporate governance*

- 90D Corporate governance rules** 35
- (1) The competent authority may make 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; 40
  - (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 – 45
- (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 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. 5
- (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 –
- (a) rules under this section, and
  - (b) listing rules. 10
- (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; 15
  - “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.
- (5) This section is without prejudice to any other power conferred by this Part to make Part 6 rules.”. 20

#### 860 Consequential amendments of the Financial Services and Markets Act 2000

- (1) The Financial Services and Markets Act 2000 (c. 8) 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 section 90A or 90B (transparency rules), subsection (1)(c) and (f) have effect as if the references to a regulated market were references to a market.”. 25
- (3) In section 73A (Part 6 Rules), after subsection (5) insert –
- “(6) Rules made under section 90A (transparency rules) or 90D (corporate governance rules) are not listing rules, disclosure rules or prospectus rules, but are Part 6 rules.”. 30
- (4) In section 91 (penalties for breach of Part 6 rules) –
- (a) after subsection (1A) insert –
    - “(1B) If the competent authority considers that any person has contravened – 35
    - (a) a provision of rules made under section 90A (transparency rules),
    - (b) a provision otherwise made in accordance with the transparency obligations directive, or
    - (c) a provision of rules made under section 90D (corporate governance), 40
  - it may impose on the person a penalty of such amount as it considers appropriate.”,
  - (b) in subsection (2) for “or (1A)” substitute “, (1A) or (1B)”, and

- (c) after subsection (7) insert –
- “(8) In this section “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.”. 5
- (5) In section 97 (appointment by the competent authority of persons to carry out investigations), in subsection (1) –
- (a) for paragraphs (a) and (b) substitute –
- “(a) there may have been a contravention of – 10
- (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;
- (b) a person who was at the material time a director of a person mentioned in section 91(1), (1A) or (1B) has been knowingly concerned in a contravention by that person of – 15
- (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;”, and 20
- (b) after subsection (3) insert –
- “(4) In this section “the transparency obligations directive” has the meaning given in section 91(8).” 25
- (6) In section 99 (fees) after subsection (1B) insert –
- “(1C) Rules under section 90A (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.”.
- (7) 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”. 30
- (8) In section 103(1) (interpretation of Part 6) 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”. 35

## 861 Corporate governance regulations

- (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; 40
- (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. 45

- (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; 5
  - (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; 10
  - (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. 15
- (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. 20
- (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 (c. 8).

*Regulation of actuaries etc*

- 862 Grants to bodies concerned with actuarial standards etc 25**
- (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.
- (2) In subsection (2) (matters carried on by bodies eligible for grants) for paragraph (l) substitute – 30
- “(l) issuing standards to be applied in actuarial work;
  - (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); 35
  - (n) investigating departures from standards within paragraph (l) or (m);
  - (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; 40
  - (q) holding disciplinary hearings relating to members of professional actuarial bodies following the conclusion of investigations within paragraph (p); 45

- (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;
  - (s) supervising the exercise by professional actuarial bodies of regulatory functions in relation to their members; 5
  - (t) overseeing or directing any of the matters mentioned above.”.
- (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, 10
- 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;”
- ““regulatory functions”, in relation to professional actuarial bodies, means any of the following – 15
- (a) investigatory or disciplinary functions exercised by such bodies in relation to the performance by their members of actuarial functions,
  - (b) the setting by such bodies of standards in relation to the performance by their members of actuarial functions, 20
  - and
  - (c) the determining by such bodies of requirements in relation to the education and training of their members;”.
- 863 Levy to pay expenses of bodies concerned with actuarial standards etc 25**
- (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).
- (2) In subsection (3)(a) after “to which” insert “, or persons within subsection (3A) to whom,”. 30
- (3) After subsection (3) insert –
- “(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).” 35
- (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.”. 40
- (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 45

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.

- (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 – 5
- “(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”. 10

#### 864 Application of provisions to Scotland and Northern Ireland

- (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 – 15
- “(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.”.
- (3) In subsection (2) in paragraph (c), after “1985 (c. 6)” insert “or the 1986 Order”.
- (4) In subsection (5) – 20
- (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
- (c) after that definition insert – 25
- ““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”. 30

#### *Exercise of voting rights by institutional investors*

#### 865 Institutional investors: information about exercise of voting rights

- (1) The Treasury or the Secretary of State may make provision by regulations requiring institutions to which this section applies to provide specified information about the exercise of voting rights attached to shares to which this section applies. 35
- In this section “specified” means specified in the regulations.
- (2) This section applies to –
- (a) unit trust schemes within the meaning of the Financial Services and Markets Act 2000 (c. 8) in respect of which an order is in force under section 243 of that Act; 40
- (b) open-ended investment companies incorporated by virtue of regulations under section 262 of that Act;



- (c) companies approved for the purposes of section 842 of the Income and Corporation Taxes Act 1988 (c. 1) (investment trusts);
  - (d) pension schemes as defined in section 1(5) of the Pension Schemes Act 1993 (c. 48) or the Pension Schemes (Northern Ireland) Act 1993 (c. 49);
  - (e) undertakings authorised under the Financial Services and Markets Act 2000 (c. 8) to carry on long-term insurance business (that is, the activity of effecting or carrying out contracts of long term insurance within the meaning of the Financial Services and Markets (Regulated Activities) Order 2001); 5
  - (f) collective investment schemes that are recognised by virtue of section 270 of that Act (schemes authorised in designated countries or territories). 10
- (3) Regulations under this section may –
- (a) provide that this section applies to other descriptions of institution;
  - (b) provide that this section does not apply to a specified description of institution. 15
- (4) The regulations must specify by whom, in the case of any description of institution, the duty imposed by the regulations is to be fulfilled.
- (5) The shares to which this section applies are shares –
- (a) of a description traded on a specified market, and 20
  - (b) in which the institution has, or is taken to have, an interest.
- Regulations under this section may provide that this section does not apply to shares of a specified description.
- (6) For the purposes of this section an institution has an interest in shares if the shares, or a depositary certificate in respect of them, are held by it, or on its behalf. 25
- A “depositary certificate” means an instrument conferring rights (other than options) –
- (a) in respect of shares held by another person (“the depositary”), and
  - (b) the transfer of which may be effected without the consent of that person. 30
- (7) Where an institution has an interest –
- (a) in a specified description of collective investment scheme (within the meaning of the Financial Services and Markets Act 2000), or
  - (b) in any other specified description of scheme or collective investment vehicle, 35
- it is taken to have an interest in any shares in which that scheme or vehicle has or is taken to have an interest.
- For this purpose a scheme or vehicle is taken to have an interest in shares if it would be regarded as having such an interest in accordance with subsection (6) if it were an institution to which this section applies. 40
- (8) The information required is such information as may be specified about the exercise or non-exercise of voting rights on specified occasions during specified periods.
- (9) The regulations may require the information to be provided, in such manner as may be specified, to such persons as may be specified, or to the public, or both. 45

- (10) The obligation imposed by regulations under this section is enforceable by civil proceedings brought by –
- (a) any person to whom the information should have been provided, or
  - (b) a specified regulatory authority.
- (11) Regulations under this section – 5
- (a) may make different provision for different descriptions of institution, different descriptions of shares and for other different circumstances; and
  - (b) are subject to affirmative resolution procedure.

*Disclosure of information under the Enterprise Act 2002* 10

## 866 Disclosure of information under the Enterprise Act 2002

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

### “241A Civil proceedings

- (1) A public authority which holds prescribed information to which section 237 applies may disclose that information to any person – 15
- (a) for the purposes of prescribed civil proceedings in the United Kingdom;
  - (b) for the purpose of any decision whether to bring such proceedings. 20
- (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;
  - (b) competition information within the meaning of section 351 of the Financial Services and Markets Act 2000; 25
  - (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). 30
- (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; 35
  - (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;
  - (c) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (5) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than that for which it is disclosed.”.

*Expenses of winding up*

**867 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 – 5

**“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. 10
- (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); 15
- (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. 20
- (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 25
- (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.”. 30
- (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 – 35

**“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. 40
- (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); 45

- (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. 5
- (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 –
- (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 10
  - (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.”. 15

*Commonhold associations*

**868 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”. 20

**PART 34** 25

NORTHERN IRELAND

**869 Extension of Companies Acts to Northern Ireland**

- (1) The Companies Acts as defined by this Act (see section 2) extend to Northern Ireland.
- (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. 30

**870 Extension of GB enactments relating to SEs** 35

- (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 40

- (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. 5
- 871 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,
  - (b) limited partnerships, 10
  - (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 –
- (a) the Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12 (N. I.)); 15
  - (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 (c. 13 (N.I.)); 20
  - (d) the European Economic Interest Groupings Regulations (Northern Ireland) 1989 (SR 1989/216).
- 872 Extension of enactments relating to business names**
- (1) The provisions of Part 31 of this Act (business names) extend to Northern Ireland. 25
- (2) The Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 (N.I. 7)) shall cease to have effect accordingly.

## PART 35

### GENERAL SUPPLEMENTARY PROVISIONS

#### *Regulations and orders* 30

**873 Regulations and orders: statutory instrument**

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

**874 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. 35

**875 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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**876 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.

**877 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.

20

(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.

25

(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"***878 Meaning of “enactment”**

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

35

- (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.

40

*Consequential and transitional provisions*

**879 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. 5
- (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 10
  - (c) any enactment passed or made before the end of the session after that in which this Act is passed.
- (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 15
  - (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. 20
- (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. 25
- (6) Orders under this section are subject to affirmative resolution procedure.

**880 Repeals**

The enactments specified in Schedule 15, which include enactments that are no longer of practical utility, are repealed to the extent specified.

**881 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. 30
- (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. 35
- (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.

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**PART 36**

## FINAL PROVISIONS

**882 Short title**

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

**883 Extent**

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

**884 Commencement**

- (1) The following provisions come into force on the day this Act is passed –
  - (a) in Part 33 (miscellaneous amendments) –  
section 862 (bodies concerned with actuarial standards), and  
section 864 (application of provisions in Scotland and Northern Ireland), 10
  - (b) Part 35 (general supplementary provisions), and
  - (c) this Part. 15
- (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.



## SCHEDULES

### SCHEDULE 1

Sections 233 and 234

#### 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 233 and 234 (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*

10

- 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 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.

*Bodies corporate* 20

- 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
  - (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. 25
- (2) For the purposes of sub-paragraph (1)(b) where – 30
- (a) a person is entitled to exercise or control the exercise of the relevant proportion of the voting power at general meetings of a body corporate, and
  - (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.
- (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. 40

- (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 1 of the Administration of Justice Act 1965 (c. 2); 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 630

## SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURES ETC FOR THE PURPOSES OF SECTION 630

## 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 440 of this Act (persons authorised to apply to court) to exercise his functions.<br>Until the coming into force of section 440, 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 32 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 32 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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|----|---|----|
| 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 1995 (S.I. 1995/3272) 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 846 of this Act (delegation of functions of Secretary of State) to exercise its functions under Part 32 of this Act (statutory auditors).                        | 45 |

	Until the coming into force of that Part, the references to section 846 and Part 32 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 32 of this Act, to exercise its functions as such. 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.	5
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. 5  
 “Foreign lawyer” has the meaning given by section 89(9) of the Courts and Legal Services Act 1990 (c. 41).
- 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. 10  
 “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. 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 – 30  
 (a) whether the use that the person or body is likely to make of the information is sufficiently important to justify making the disclosure; 35  
 (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. 40

## SCHEDULE 3

Section 657

## 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 625(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 625 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 – 5
- (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)). 10
- (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 – 15
- (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 20
- (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 25
- (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.”. 30
- (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. 35
- (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 – 40
- (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) 45

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 743 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 543 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

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

- 14 For section 185(5) of the Companies Act 1985 (failure to prepare share certificates, etc) substitute – 15
- “(5) If default is made in complying with subsection (1), an offence is committed by every officer of the company who is in default.
- (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.”. 20

*Offences in connection with share warrants (Scotland)*

- 15 (1) Section 189 of the Companies Act 1985 (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.”. 25
- (3) In subsection (2), for the words “he is on conviction thereof” to the end substitute “he commits an offence.”.
- (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). 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 seven years or a fine (or both); 35
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).”.

*Failure to send to registrar particulars of charge or of issue of debentures (England and Wales)* 40

- 16 (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 –	
	(a) the company, and	
	(b) every officer of the company who is in default.”.	
	(2) At the end of that section add –	5
	“(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.”.	10
	<i>Failure to send to registrar particulars of charge on property acquired (England and Wales)</i>	
17	For section 400(4) of the Companies Act 1985 (c. 6) (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 –	15
	(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 –	
	(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.”.	20
	<i>Delivery of debenture etc without endorsement of certificate of registration of charge (England and Wales)</i>	
18	(1) In subsection (3) of section 402 of the Companies Act 1985 (delivery of debenture without required endorsement) for the words “he is liable” to the end 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 on summary conviction to a fine not exceeding level 3 on the standard scale.”.	30
	<i>Failure to give notice of appointment of receiver or manager, or of his ceasing to act (England and Wales)</i>	
19	For section 405(4) of the Companies Act 1985 (notice to registrar of enforcement of security) substitute –	
	“(4) A person who makes default in complying with the requirements of this section commits an offence.	35
	(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.”.	40



*Omission of entry from company's register of charges (England and Wales)*

20 (1) In subsection (3) of section 407 of the Companies Act 1985 (c. 6) (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".

(2) At the end of that section add – 5

- “(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.”.

*Refusal of inspection of charging instrument or of register of charges (England and Wales)* 10

21 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 –

- (a) the company, and 15
- (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, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”. 20

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

22 (1) In subsection (3) of section 415 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 – 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 (Scotland)*

23 (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 – 35

- (a) the company, and
- (b) every officer of the company who is in default.”. 40

	(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 and, for continued contravention, a daily default fine not exceeding one-tenth of the statutory maximum.”.	5
	<i>Omission of entry from company’s register of charges (Scotland)</i>	
24	(1) In subsection (3) of section 422 of the Companies Act 1985 (c. 6) (Scotland: failure to make entry in company’s register of charges) for “he is liable to a fine” substitute “he commits an offence”.	10
	(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.”.	15
	<i>Refusal of inspection of charging instrument or of register of charges (Scotland)</i>	
25	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 –	20
	(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, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”.	25
	<i>Failure to annex to memorandum court order sanctioning compromise or arrangement with creditors</i>	
26	For section 425(4) of the Companies Act 1985 (failure to annex to company’s constitutional documents copy of court order sanctioning compromise or arrangement with creditors) substitute –	30
	“(4) If a company makes default in complying with subsection (3), an offence is committed by –	
	(a) the company, and	
	(b) every officer of the company who is in default.	35
	(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.”.	
	<i>Failure to comply with requirements to inform members and creditors about compromise or arrangement</i>	
27	For subsection (6) of section 426 of the Companies Act 1985 (failure to inform members or creditors in advance of meeting about compromise or	40

arrangement) substitute –

- “(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. 5
- (6A) For the purposes of subsection (6) the following are treated as officers of the company –
- (a) a liquidator or administrator of the company, and
  - (b) a trustee of a deed for securing the issue of debentures of the company. 10
- (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.
- (6C) A person guilty of an offence under subsection (6) is liable – 15
- (a) on conviction on indictment, to a fine;
  - (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*

- 28 (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”. 20
- (2) At the end of that section add –
- “(8) A person who makes default in complying with subsection (7) commits an offence. 25
- (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.”.

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

- 29 (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. 30
- (2) After that provision insert –
- “(5A) If default is made in complying with subsection (5) an offence is committed by – 35
- (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.”.

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

- 30 (1) In subsection (6) of section 429 of the Companies Act 1985 (c. 6) (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.” 5
- (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 – 10
- (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum; 15
- (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.”. 20

*Failure to give notice of rights to minority shareholder*

- 31 (1) In subsection (6) of section 430A of the Companies Act 1985 (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 – 25
- “(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.”. 30

*Failure to give information about interests in shares etc*

- 32 (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”. 35
- (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 – 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) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum; 45

- (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.”. 5

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

- 33 (1) In section 448(7) of the Companies Act 1985 (c. 6) (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. 10
- (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.”. 15

*Wrongful disclosure of information to which section 449 applies*

- 34 (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 – 20
  - “(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);
    - (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); 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).”.
- (4) Omit subsection (7). 30

*Destruction, mutilation etc of company documents*

- 35 (1) For subsection (3) of section 450 of the Companies Act 1985 (offence of destroying, etc company documents) substitute –
  - “(3) A person guilty of an offence under this section is liable – 35
    - (a) on conviction on indictment, to imprisonment for a term not exceeding 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); 40

- (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).”.

(2) Omit subsection (4) of that section.

*Provision of false information in purported compliance with section 447* 5

- 36 (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 –

- “(2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both); 10
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both); 15
    - (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).”.

(2) Omit subsection (3) of that section.

*Obstruction of inspector, etc exercising power to enter and remain on premises* 20

- 37 (1) Section 453A of the Companies Act 1985 (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 –

- “(5A) A person guilty of an offence under this section is liable – 25
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

(4) Omit subsection (6).

*Attempted evasion of restrictions under Part 15* 30

- 38 (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 – 35

- (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 – 40
- (a) on conviction on indictment, to a fine;

- (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

*Fraudulent trading*

- 39 (1) Section 458 of the Companies Act 1985 (fraudulent trading) is amended as follows. 5
- (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 –
- “(2) A person guilty of an offence under this section is liable – 10
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten 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); 15
- (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).”.

*Failure to register court order in case of unfair prejudice to company members* 20

- 40 (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 –
- “(5A) If a company makes default in complying with subsection (5), an offence is committed by – 25
- (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.”. 30

*Failure to register court order declaring company’s dissolution void*

- 41 (1) In section 651(3) of the Companies Act 1985 (failure to register court order declaring void company’s dissolution) omit the second sentence. 35
- (2) After that provision insert –
- “(3A) If a person fails to comply with subsection (3) he commits an offence.
- (3B) 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

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

- 42 (1) In subsection (1) of section 652E of the Companies Act 1985 (c. 6) (enforcement of duties in connection with application to strike company off register) omit “and liable to a fine”.
- (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 –
- “(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. 10
- (7) 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 – 15
- (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
- (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).”.
- 20

*Making unauthorised application to strike off company*

- 43 (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 – 25
- “(3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

## SCHEDULE 5

Section 760(1)

30

## DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO A COMPANY

## PART 1

## INTRODUCTION

*Application of Schedule*

- 1 This Schedule does not apply to documents or information sent or supplied by one company to another (see section 760(4) and Schedules 6 and 7). 35



PART 2

COMMUNICATIONS IN HARD COPY FORM

*Introduction*

- 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. 5

*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).  
(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. 10

*Address for communications in hard copy form*

- 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. 15

PART 3

COMMUNICATIONS IN ELECTRONIC FORM 20

*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.  
(2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts. 25

*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  
(b) the company is deemed to have so agreed by a provision in the Companies Acts. 30

*Address for communications in electronic form* 35

- 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 –

- (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.
- (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. 5

#### PART 4

##### OTHER AGREED FORMS OF COMMUNICATION

- 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. 10
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

#### SCHEDULE 6

Section 760(2) 15

##### COMMUNICATIONS BY A COMPANY OTHER THAN A TRADED COMPANY

#### PART 1

##### INTRODUCTION

##### *Application of this Schedule*

- 1 This Schedule applies to documents or information sent or supplied by companies that are not traded companies. 20

#### 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. 25

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

- 3 (1) A document or information in hard copy form must be – 30
- (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. 35

*Address for communications in hard copy form*

- 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; 5
  - (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;
  - (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. 10
- (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 15

COMMUNICATIONS IN ELECTRONIC FORM

*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. 20

*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 25
  - (b) to a company that is deemed to have so agreed by a provision in the Companies Acts.

*Address for communications in electronic form* 30

- 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. 35
- (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. 40

PART 4

COMMUNICATIONS BY MEANS OF A WEBSITE

*Use of website*

- 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. 5
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

*Agreement to use of website*

- 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 – 10
- (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), 15
- and has not revoked that agreement.

*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 20
- (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”).
- (2) To the extent that – 25
- (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, 30
- 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 35
- (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. 40
- (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
  - (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) A resolution under this paragraph is subject to Chapter 3 of Part 3 of this Act (resolutions affecting company's constitution).

*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. 10
- (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
  - (b) the instrument creating the debenture in question contains provision to that effect, 15
- 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.
- (3) The conditions are that— 20
- (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
  - (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 30
  - (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) 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 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. 40

*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 45
  - (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.

*Notification of availability* 5

- 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. 10
- (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. 15

*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. 20
- (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 attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid. 25
- 30

PART 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. 35
- (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*

- 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. 5
- (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 – 10
- (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.

*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. 15
- (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 – 20
- (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.
- (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. 25
- (4) This paragraph has effect subject to anything in the company’s articles.
- (5) References in this paragraph to the bankruptcy of a person include – 30
- (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. 35

SCHEDULE 7

760(2)

COMMUNICATIONS BY A TRADED COMPANY

PART 1

INTRODUCTION

*Application of this Schedule* 5

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

PART 2

COMMUNICATIONS IN HARD COPY FORM

*Introduction* 10

- 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.

*Method of communication in hard copy form*

- 3 (1) A document or information in hard copy form must be— 15
- (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. 20

*Address for communications in hard copy form*

- 4 (1) Documents or information in hard copy form may be sent or supplied by the traded company — 25
- (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;
  - (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; 30
  - (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. 35



PART 3

COMMUNICATIONS IN ELECTRONIC FORM

*Introduction*

- 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. 5
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts.

*Agreement to communications in electronic form*

- 6 (1) A document or information may only be sent or supplied by a traded company in electronic form – 10
- (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. 15
- (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,
- (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 20
- (c) a holder of debt securities of the company, except in accordance with paragraph 7 or 8 (resolution required before documents and information sent or supplied in electronic form). 25

*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 – 30
- (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.
- (2) The company may only send or supply such documents or information in electronic form if – 35
- (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). 40

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

- 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 – 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.
- (3) For the purposes of this paragraph – 10
- (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
- (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. 15
- (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. 20

*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 25
- (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 – 30
- (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.

PART 4

COMMUNICATIONS BY MEANS OF A WEBSITE 35

*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.
- (2) This paragraph has effect subject to any requirements or contrary provision in the Companies Acts. 40

*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 –
- (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”).
- (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.
- (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
  - (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
  - (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.
- (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.
- (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 –
- (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.

- 
- (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 5
  - (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 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
- (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. 20
- (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 25
  - (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 – 30
- (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 – 35
- (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 this paragraph, and has not revoked that agreement. 40
- (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 45
  - (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.

- (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 5
  - (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. 10
- (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. 15
- (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 20
  - (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* 25

- 14 A document or information may only be sent or supplied by a traded company to a person who is not—
- (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). 30

*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— 35
- (a) to read it, and
  - (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 40
  - (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.

*Notification of availability*

- 16 (1) The traded company must notify the intended recipient of—



- (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.

*Death or bankruptcy of holder of shares* 5

- 20 (1) This paragraph has effect in the case of the death or bankruptcy of a holder of a traded 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 – 10
- (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. 15
- (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.
- (5) References in this paragraph to the bankruptcy of a person include – 20
- (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. 25

SCHEDULE 8

Section 771

PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTARY PROVISIONS

*Introduction* 30

- 1 The provisions of this Schedule explain expressions used in section 771 (parent and subsidiary undertakings) and otherwise supplement that section.

*Voting rights in an undertaking*

- 2 (1) In section 771(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. 35

- (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. 5

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

- 3 (1) In section 771(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. 10
- (2) An undertaking shall be treated as having the right to appoint to a directorship if—
- (a) a person’s appointment to it follows necessarily from his appointment as director of the undertaking, or 15
- (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. 20

*Right to exercise dominant influence*

- 4 (1) For the purposes of section 771(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. 25
- (2) A “control contract” means a contract in writing conferring such a right which—
- (a) is of a kind authorised by the articles of the undertaking in relation to which the right is exercisable, and 30
- (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 771(4)(a).

*Rights exercisable only in certain circumstances or temporarily incapable of exercise* 35

- 5 (1) Rights which are exercisable only in certain circumstances shall be taken into account only—
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
- (b) when the circumstances are within the control of the person having the rights. 40
- (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.
- 7 (1) Rights held by a person as nominee for another shall be treated as held by the other. 5
- (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*

- 8 Rights attached to shares held by way of security shall be treated as held by the person providing the security – 10
- (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
- (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. 15

*Rights attributed to parent undertaking*

- 9 (1) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings. 20
- (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.
- (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. 25

*Disregard of certain rights*

- 10 The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself. 30

*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. 35

## SCHEDULE 9

Section 779

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

## SCHEDULE 10

Section 811

### RECOGNISED SUPERVISORY BODIES

#### PART 1 15

##### GRANT AND REVOCATION OF RECOGNITION OF A SUPERVISORY BODY

##### *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”). 20
- (2) Any such 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.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information. 25
- (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. 30
- (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. 35

- (7) The reference in sub-paragraph (6)(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 its members or persons seeking to become members,
  - (b) relevant for the purposes of this Part, and
  - (c) intended to have continuing effect,
- 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.

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*Grant and refusal of recognition*

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- 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.

- (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.

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- (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 –

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- (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 –

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- (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).

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- (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”),

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- (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.

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- (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.

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- (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. 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). 10
- (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. 15
- (6) The persons within this sub-paragraph are –
- (a) the recognised body on which a notice is served under sub-paragraph (3),
  - (b) any member of the body, 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 sub-paragraph (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 –
- (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. 30
- (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 –
- (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 in respect of a body the Secretary of State must –
- (a) give written notice of the making of the order to the body,
  - (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. 40
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*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)),
- 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.

*Orders not statutory instruments*

- 5 Orders under this Part of this Schedule shall not be made by statutory instrument. 10

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 – 15
- (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 20
  - (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. 25
- (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.
- 7 (1) This paragraph explains what is meant in paragraph 6(1)(b) by a firm being “controlled by qualified persons”. 30
- (2) In this paragraph references to a person being qualified are –
- (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; 35
- (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. 40
- (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. 5
- (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;
  - (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. 10
- (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; 15
  - (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.
- (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. 20

*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. 25
- (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; 30
  - (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
    - (iii) any director or controller of any such other body; and
  - (c) in the case of a partnership, any matter relating to – 35
    - (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, or
    - (iv) any director or controller of any such other body. 40
- (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. 45



*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. 5
- (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. 10
- (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. 15
- (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. 20

*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. 25

*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. 30

*Monitoring and enforcement*

- 12 (1) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules. 35
- (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* 40

- 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. 5
- (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).
- (3) In this paragraph – 10  
 “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; 15  
 “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 – 20  
 (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. 25

*Investigation of complaints*

- 15 (1) The body must have effective arrangements for the investigation of complaints against – 30  
 (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.
- (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. 35

*Independent investigation for disciplinary purposes of public interest cases*

- 16 (1) The body must – 40  
 (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.

- (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.

*Meeting of claims arising out of audit work* 5

- 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.

- (2) This may be achieved by professional indemnity insurance or other appropriate arrangements. 10

*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 – 15

- (a) requirements under section 818 (Secretary of State’s power to call for information);  
(b) regulations under section 833 (the register of auditors);  
(c) regulations under section 834 (information to be made available to the public). 20

*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.

*Promotion and maintenance of standards* 25

- 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. 30

PART 3

ARRANGEMENTS IN WHICH RECOGNISED SUPERVISORY BODIES ARE REQUIRED TO PARTICIPATE 35

*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 40

- (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 – 5
- (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.

*Arrangements for independent monitoring of audits of listed companies and other major bodies* 10

- 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 15
- (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.

*Arrangements for independent investigation for disciplinary purposes of public interest cases* 20

- 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, 25
- (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, 30
- (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. 35
- (2) In this paragraph –
- “public interest cases” means matters which raise or appear to raise important issues affecting the public interest;
- “statutory audit function” means any function performed as a statutory auditor. 40

*Supplementary: arrangements to operate independently of body*

- 25 (1) This paragraph applies for the purposes of –
- (a) paragraph 21(b),

- (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.
- (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.

*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.

## SCHEDULE 11

Section 814

## RECOGNISED PROFESSIONAL QUALIFICATIONS

## PART 1

## GRANT AND REVOCATION OF RECOGNITION OF A PROFESSIONAL QUALIFICATION

*Application for recognition of professional qualification* 25

- 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. 30
- (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.
- (4) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information. 35

- (5) The directions and requirements given or imposed under sub-paragraphs (3) and (4) may differ as between different applications.
- (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. 5
- (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.
- (8) Every application must be accompanied by – 10
- (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 – 15
- (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,
  - (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). 20
- (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, 25
- 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. 30
- (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. 35
- (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. 40

*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
  - (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. 5
- (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 10
  - (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. 15
- (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. 20
- (6) The persons within this sub-paragraph are –
  - (a) the qualifying body on which a notice is served under sub-paragraph (3), 25
  - (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.
- (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. 30
- (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. 35
- (9) An order revoking a recognition order may contain such transitional provision as the Secretary of State thinks necessary or expedient. 40
- (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).
- (11) On making an order revoking a recognition order the Secretary of State must – 45

- (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
- (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. 5

*Transitional provision*

- 4 A recognition order made and not revoked under – 10
- (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. 15

*Orders not statutory instruments*

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

PART 2

REQUIREMENTS FOR RECOGNITION OF A PROFESSIONAL QUALIFICATION 20

*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.
- (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 – 25
- (a) being educated to such a standard as would entitle him to be considered for such admission on the basis of – 30
    - (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 35
  - (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.
- (3) The assessment, tests and oral examination referred to in sub-paragraph (2)(b) may be conducted by – 40
- (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.

*Requirement for theoretical instruction or professional experience*

- 7 (1) The qualification must be restricted to persons who – 5  
(a) have completed a course of theoretical instruction in the subjects prescribed for the purposes of paragraph 8, or  
(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. 10

*Examination*

- 8 (1) The qualification must be restricted to persons who have passed an examination (at least part of which is in writing) testing – 15  
(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. 20
- (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.
- (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. 25
- (4) Regulations under this paragraph are subject to negative resolution procedure. 30

*Practical training*

- 9 (1) The qualification must be restricted to persons who have completed at least three years’ practical training of which – 35  
(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.
- (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. 40

- (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. 5
- (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. 10

*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 15
  - (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. 20  
25

*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 30
  - (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. 35

SCHEDULE 12

Section 836

ARRANGEMENTS IN WHICH REGISTERED THIRD COUNTRY AUDITORS ARE REQUIRED TO PARTICIPATE

*Arrangements for independent monitoring of audits of traded non-Community companies* 40

- 1 (1) The arrangements referred to in section 836(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
  - (b) for ensuring that the carrying out of such monitoring and inspections is done independently of the registered third country auditor. 5
- (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 836(1)(b) are appropriate arrangements— 10
- (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,
  - (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, 15
  - (c) for requiring such hearings to be held in public except where the interests of justice otherwise require,
  - (d) for the persons before whom such hearings have taken place to decide whether (and, if so, what) disciplinary action should be taken against the registered third country auditor, and 20
  - (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.
- (2) In this paragraph— 25
- “disciplinary action” includes the imposition of a fine; and
  - “third country audit function” means any function performed as a third country auditor.

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

- 3 (1) This paragraph applies for the purposes of— 30
- (a) paragraph 1(1)(b), or
  - (b) paragraph 2(1)(e).
- (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— 35
- (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.
- (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. 40

*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. 5

*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. 10

*Specification of particular arrangements by the Secretary of State*

- 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 836(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. 15
- (2) An order under sub-paragraph (1) is subject to negative resolution procedure.

## SCHEDULE 13

Section 846

## SUPPLEMENTARY PROVISIONS WITH RESPECT TO DELEGATION ORDER 20

*Operation of this Schedule*

- 1 (1) This Schedule has effect in relation to a body designated by a delegation order under section 846 as follows –
- (a) paragraphs 2 to 12 have effect in relation to the body where it is established by the order; 25
- (b) paragraphs 2 and 6 to 11 have effect in relation to the body where it is an existing body;
- (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 – 30
- (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 846. 35

*Status*

- 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.
- (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. 5
- (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 – 10
- (a) the terms on which the members of the body are to hold and vacate office;
  - (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. 15
- (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 – 20
- (a) such pension, allowance or gratuity to or in respect of that person on his retirement or death, or
  - (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 – 25
- (a) a person ceases to be a member of the body otherwise than on the expiry of his term of office, and
  - (b) it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, 30
- the body must make a payment to him by way of compensation of such amount as the Secretary of State may determine.

*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. 35
- (2) The delegation order may, in particular –
- (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. 40

*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
  - (b) any purposes incidental to those functions. 5
- (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. 10
- (5) Any exercise by the body of the power to prescribe fees requires the approval of the Secretary of State.
- (6) The Secretary of State may, after consultation with the body, by order vary or revoke any regulations prescribing fees made by the body. 15

*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.
- (2) The instrument must specify the provision of this Part of this Act under which it is made. 20
- (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.
- (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. 25
- 8 (1) Immediately after an instrument is made it must be printed and made available to the public with or without payment.
- (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. 30
- 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 – 35
- (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, 40
- 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.
- (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. 5

*Report and accounts*

- 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. 10
- (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.
- (4) The following provisions of this paragraph apply as follows— 15
- (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.
- (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. 20
- (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. 25
- (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. 30

*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. 35
- (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.
- (3) The provision that may be made in connection with the transfer of a function includes, in particular, provision— 40
- (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;  |    |
| (c) | for the transfer of any property, rights or liabilities from the Secretary of State to that body;  | 5  |
| (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.   | 10 |
| (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;  | 15 |
| (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;  |    |
| (c) | for the substitution of the Secretary of State for that body in any instrument, contract or legal proceedings.   | 20 |
| 12  | Where a delegation order is revoked, the Secretary of State may by order make provision –  |    |
| (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.  | 25 |
| 13  | (1) This paragraph applies where the body is an unincorporated association.  |    |
|     | (2) Any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.  |    |
|     | (3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any transferred function.   | 30 |
|     | (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. | 35 |

## SCHEDULE 14

Section 858

## 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. | 40 |
|   | (2) In subsection (2) –   |    |





<i>Short title and chapter</i>	<i>Extent of repeal</i>
Companies Act 1985 (c. 6) – <i>cont.</i>	<p>Sections 363(3) and (4). Sections 366 to 394A. In section 426(7), the words “; and any person” to the end. 5 In section 427(5), the words “; and if default is made” to the end. In section 437- (a) in subsection (1), the second sentence, and 10 (b) subsections (1B) and (1C). Section 438. In section 439 – (a) in subsection (2), “, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438”, 15 (b) subsections (3) and (7), and (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)”. 20 Section 442(2). Section 446. In section 448(7), the words “and liable to a fine.” to the end. 25 Section 449(7). Section 450(4). Section 451(3). Section 453(1A)(b). 30 Section 453A(6). In section 461(5), the words “; and if a company makes default” to the end. In section 651(3), the second sentence. In section 652E – 35 (a) in subsection (1), “and liable to a fine”, and (b) in subsection (2), “and liable to imprisonment or a fine, or both”. In section 652F(2), “and liable to a fine”. 40 Sections 675 to 677. Sections 680 to 690. Parts 23 and 24. Section 718. Section 720. 45 Sections 722 to 723F. Sections 725 to 734 Section 735. In section 735A(2), “, 729”. Sections 740 to 742A. 50 Section 743A.</p>



<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Companies Act 1989 (c. 40) – <i>cont.</i>	In Schedule 10, paragraphs 1, 3, 10 and 11 to 15 and 17 to 24. Schedules 15 and 16. In Schedule 17, paragraphs 1 to 4 and 7. In Schedule 19, paragraphs 2 to 9, 12 to 14, 17, 18 and 21.	5
Age of Legal Capacity (Scotland) Act 1991 (c. 50)	In Schedule 1, paragraph 39.	
Charities Act 1993 (c. 10)	In Schedule 6, paragraph 20.	10
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.	
Requirements of Writing (Scotland) Act 1995 (c. 7)	In Schedule 4, paragraphs 51 to 54.	15
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.	20
Financial Services and Markets Act 2000 (c. 8)	Section 143.	
Political Parties, Elections and Referendums Act 2000 (c. 41)	Part 9. Schedule 19.	25
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)	Section 7. Sections 9 and 10. Section 11(1). Sections 12 and 13. Sections 19 and 20. Schedule 1.	30
	In Schedule 2, paragraphs 6 to 10, 22 to 24 and 26. In Schedule 6, paragraphs 1 to 9.	35
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.	40

## 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.	45

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))	The whole Order.	5
Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 (N.I. 7))	The whole Order.	
Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 N.I. 9))	Article 3.	10
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.	15
European Economic Interest Groupings Regulations (Northern Ireland) 1989 (S.R. 1989/216)	The whole Regulations.	20
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.	25
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.	30
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.	35
Deregulation and Contracting Out (Northern Ireland) Order 1996 (S.I. 1996/1632 (N.I. 11))	Article 11. Schedule 2. In Schedule 5, paragraph 4.	40
Youth Justice and Criminal Evidence Act 1999 (c. 23)	In Schedule 4, paragraph 18.	
Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12 (N.I.))	The whole Act.	45
Open-Ended Investment Companies Act (Northern Ireland) 2002 (c. 13)	The whole Act.	

<i>Short title and chapter</i>		<i>Extent of repeal or revocation</i>	
Company Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4))	Directors (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4))	In Schedule 3, paragraphs 3 to 5.	5
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	(Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	Section 11(2).	
Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 (S.I. 2005/1452 (N.I. 7))	(Miscellaneous Provisions) (Northern Ireland) Order 2005 (S.I. 2005/1452 (N.I. 7))	Article 4(2).	10
Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (S.I. 2005/1967 (N.I. 17))	(Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (S.I. 2005/1967 (N.I. 17))	The whole Order.	15
Other repeals			
<i>Short title and chapter</i>		<i>Extent of repeal or revocation</i>	
Business Names Act 1985 (c. 7)		The whole Act.	20
Companies Act 1989 (c. 40)		Part 2.	

# Company Law Reform Bill [HL]

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A

## B I L L

[AS AMENDED IN GRAND COMMITTEE]

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.

*The Lord Sainsbury of Turville*

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