

- (a) if the company was struck off the register under section 1000 or 1001 (power of registrar to strike off defunct companies) and the company was, at the time of the striking off, carrying on business or in operation;
  - (b) if the company was struck off the register under section 1003 (voluntary striking off) and any of the requirements of sections 1004 to 1009 was not complied with;
  - (c) if in any other case the court considers it just to do so.
- (2) If the court orders restoration of the company to the register, the restoration takes effect on a copy of the court's order being delivered to the registrar.
  - (3) The registrar must cause to be published in the Gazette notice of the restoration of the company to the register.
  - (4) The notice must state –
    - (a) the name of the company or, if the company is restored to the register under a different name (see section 1033), that name and its former name,
    - (b) the company's registered number, and
    - (c) the date on which the restoration took effect.

#### **1032 Effect of court order for restoration to the register**

- (1) The general effect of an order by the court for restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register.
- (2) The company is not liable to a penalty under section 453 or any corresponding earlier provision (civil penalty for failure to deliver accounts) for a financial year in relation to which the period for filing accounts and reports ended –
  - (a) after the date of dissolution or striking off, and
  - (b) before the restoration of the company to the register.
- (3) The court may give such directions and make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register.
- (4) The court may also give directions as to –
  - (a) the delivery to the registrar of such documents relating to the company as are necessary to bring up to date the records kept by the registrar,
  - (b) the payment of the costs (in Scotland, expenses) of the registrar in connection with the proceedings for the restoration of the company to the register,
  - (c) where any property or right previously vested in or held on trust for the company has vested as *bona vacantia*, the payment of the costs (in Scotland, expenses) of the Crown representative –
    - (i) in dealing with the property during the period of dissolution, or
    - (ii) in connection with the proceedings on the application.
- (5) In this section the “Crown representative” means –
  - (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
  - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;

- (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
- (d) in relation to other property, the Treasury Solicitor.

*Supplementary provisions*

**1033 Company's name on restoration**

- (1) A company is restored to the register with the name it had before it was dissolved or struck off the register, subject to the following provisions.
- (2) If at the date of restoration the company could not be registered under its former name without contravening section 66 (name not to be the same as another in the registrar's index of company names), it must be restored to the register –
  - (a) under another name specified –
    - (i) in the case of administrative restoration, in the application to the registrar, or
    - (ii) in the case of restoration under a court order, in the court's order, or
  - (b) as if its registered number was also its name.

References to a company's being registered in a name, and to registration in that context, shall be read as including the company's being restored to the register.

- (3) If a company is restored to the register under a name specified in the application to the registrar, the provisions of –
  - section 80 (change of name: registration and issue of new certificate of incorporation), and
  - section 81 (change of name: effect),
 apply as if the application to the registrar were notice of a change of name.
- (4) If a company is restored to the register under a name specified in the court's order, the provisions of –
  - section 80 (change of name: registration and issue of new certificate of incorporation), and
  - section 81 (change of name: effect),
 apply as if the copy of the court order delivered to the registrar were notice of a change a name.
- (5) If the company is restored to the register as if its registered number was also its name –
  - (a) the company must change its name within 14 days after the date of the restoration,
  - (b) the change may be made by resolution of the directors (without prejudice to any other method of changing the company's name),
  - (c) the company must give notice to the registrar of the change, and
  - (d) sections 80 and 81 apply as regards the registration and effect of the change.
- (6) If the company fails to comply with subsection (5)(a) or (c) an offence is committed by –
  - (a) the company, and

- (b) every officer of the company who is in default.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

**1034 Effect of restoration to the register where property has vested as bona vacantia**

- (1) The person in whom any property or right is vested by section 1012 (property of dissolved company to be *bona vacantia*) may dispose of, or of an interest in, that property or right despite the fact that the company may be restored to the register under this Chapter.
- (2) If the company is restored to the register –
- (a) the restoration does not affect the disposition (but without prejudice to its effect in relation to any other property or right previously vested in or held on trust for the company), and
  - (b) the Crown or, as the case may be, the Duke of Cornwall shall pay to the company an amount equal to –
    - (i) the amount of any consideration received for the property or right or, as the case may be, the interest in it, or
    - (ii) the value of any such consideration at the time of the disposition,or, if no consideration was received an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.
- (3) There may be deducted from the amount payable under subsection (2)(b) the reasonable costs of the Crown representative in connection with the disposition (to the extent that they have not been paid as a condition of administrative restoration or pursuant to a court order for restoration).
- (4) Where a liability accrues under subsection (2) in respect of any property or right which before the restoration of the company to the register had accrued as *bona vacantia* to the Duchy of Lancaster, the Attorney General of that Duchy shall represent Her Majesty in any proceedings arising in connection with that liability.
- (5) Where a liability accrues under subsection (2) in respect of any property or right which before the restoration of the company to the register had accrued as *bona vacantia* to the Duchy of Cornwall, such persons as the Duke of Cornwall (or other possessor for the time being of the Duchy) may appoint shall represent the Duke (or other possessor) in any proceedings arising out of that liability.
- (6) In this section the “Crown representative” means –
- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
  - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
  - (c) in relation to property in Scotland, the Queen’s and Lord Treasurer’s Remembrancer;
  - (d) in relation to other property, the Treasury Solicitor.

**PART 32**

## COMPANY INVESTIGATIONS: AMENDMENTS

**1035 Powers of Secretary of State to give directions to inspectors**

- (1) In Part 14 of the Companies Act 1985 (c. 6) (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.
- (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
  - (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.
- (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.
- (5) In this section—
- (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.

**446B Direction to terminate investigation**

- (1) The Secretary of State may direct an inspector to take no further steps in his investigation.
- (2) The Secretary of State may give a direction under this section to an inspector appointed under section 432(1) or 442(3) only on the grounds that it appears to him that—
- (a) matters have come to light in the course of the inspector’s investigation which suggest that a criminal offence has been committed, and

- (b) those matters have been referred to the appropriate prosecuting authority.
- (3) Where the Secretary of State gives a direction under this section, any direction already given to the inspector under section 437(1) to produce an interim report, and any direction given to him under section 446A(3) in relation to such a report, shall cease to have effect.
- (4) Where the Secretary of State gives a direction under this section, the inspector shall not make a final report to the Secretary of State unless—
  - (a) the direction was made on the grounds mentioned in subsection (2) and the Secretary of State directs the inspector to make a final report to him, or
  - (b) the inspector was appointed under section 432(1) (appointment in pursuance of order of the court).
- (5) An inspector shall comply with any direction given to him under this section.
- (6) In this section, a reference to an inspector’s investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary).”.
- (2) In section 431 of that Act (inspectors’ powers during investigation) in subsection (1) for “report on them in such manner as he may direct” substitute “report the result of their investigations to him”.
- (3) In section 432 of that Act (other company investigations) in subsection (1) for “report on them in such manner as he directs” substitute “report the result of their investigations to him”.
- (4) In section 437 of that Act (inspectors’ reports) —
  - (a) in subsection (1) omit the second sentence, and
  - (b) subsections (1B) and (1C) shall cease to have effect.
- (5) In section 442 of that Act (power to investigate company ownership), omit subsection (2).

### **1036 Resignation, removal and replacement of inspectors**

After section 446B of the Companies Act 1985 (c. 6) (inserted by section 1035 above) insert —

#### *“Resignation, removal and replacement of inspectors*

##### **446C Resignation and revocation of appointment**

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

##### **446D Appointment of replacement inspectors**

- (1) Where —
  - (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.

- (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.
- (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.
- (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).”.

#### **1037 Power to obtain information from former inspectors etc**

- (1) After section 446D of the Companies Act 1985 (c. 6) (inserted by section 1036 above) insert—

*“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—
  - (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.
- (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.
- (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.

- (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.”.
- (2) In section 451A of that Act (disclosure of information by Secretary of State or inspector), in subsection (1)(a) for “446” substitute “446E”.
- (3) In section 452(1) of that Act (privileged information) for “446” substitute “446E”.

### **1038 Power to require production of documents**

- (1) In section 434 of the Companies Act 1985 (c. 6) (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.
  - (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—
    - (a) in hard copy form, or
    - (b) in a form from which a hard copy can be readily obtained.”.

### **1039 Disqualification orders: consequential amendments**

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

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

## PART 33

### UK COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION

#### CHAPTER 1

##### COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION BUT AUTHORISED TO REGISTER

#### **1040 Companies authorised to register under this Act**

- (1) This section applies to—
  - (a) any company that was in existence on 2nd November 1862 (including any company registered under the Joint Stock Companies Acts), and
  - (b) any company formed after that date (whether before or after the commencement of this Act)—
    - (i) in pursuance of an Act of Parliament other than this Act or any of the former Companies Acts,
    - (ii) in pursuance of letters patent, or
    - (iii) that is otherwise duly constituted according to law.
- (2) Any such company may on making application register under this Act.
- (3) Subject to the following provisions, it may register as an unlimited company, as a company limited by shares or as a company limited by guarantee.
- (4) A company having the liability of its members limited by Act of Parliament or letters patent—
  - (a) may not register under this section unless it is a joint stock company, and
  - (b) may not register under this section as an unlimited company or a company limited by guarantee.
- (5) A company that is not a joint stock company may not register under this section as a company limited by shares.
- (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.

#### **1041 Definition of “joint stock company”**

- (1) For the purposes of section 1040 (companies authorised to register under this Act) “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.
- (2) Such a company when registered with limited liability under this Act is deemed a company limited by shares.

#### **1042 Power to make provision by regulations**

- (1) The Secretary of State may make provision by regulations—



- (a) for and in connection with registration under section 1040 (companies authorised to register under this Act), 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).
- (3) Regulations under this section are subject to negative resolution procedure.

## CHAPTER 2

### UNREGISTERED COMPANIES

#### 1043 Unregistered companies

- (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;
  - (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.
- (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.
- (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.
- 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) In this section “specified” means specified in the regulations.
- (6) Regulations under this section are subject to negative resolution procedure.

**PART 34**

## OVERSEAS COMPANIES

*Introductory***1044 Overseas companies**

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

**1045 Company contracts and execution of documents by companies**

- (1) The Secretary of State may make provision by regulations applying sections 43 to 52 (formalities of doing business and other matters) to overseas companies, subject to such exceptions, adaptations or modifications as may be specified in the regulations.
- (2) Regulations under this section are subject to negative resolution procedure.

*Registration of particulars***1046 Duty to register particulars**

- (1) The Secretary of State may make provision by regulations requiring an overseas company –
  - (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
  - (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
  - (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);

“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,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
  - (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.
- (7) In this section “specified” means specified in the regulations.
- (8) Regulations under this section are subject to affirmative resolution procedure.

#### **1047 Registered name of overseas company**

- (1) Regulations under section 1046 (duty to register particulars) must require an overseas company that is required to register particulars to register its name.
- (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 1048.
- (3) Subject only to subsection (5), an EEA company may always register 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 53 (prohibited names);
  - (b) sections 54 to 56 (sensitive words and expressions);
  - (c) section 65 (inappropriate use of indications of company type or legal form);
  - (d) sections 66 to 74 (similarity to other names);
  - (e) section 75 (provision of misleading information etc);
  - (f) section 76 (misleading indication of activities).
- (5) The provisions of section 57 (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 1048.

#### **1048 Registration under alternative name**

- (1) An overseas company that is required to register particulars under section 1046 may at any time deliver to the registrar for registration a statement specifying a name, other than its corporate name, under which it proposes to carry on business in the United Kingdom.
- (2) An overseas company that has registered an alternative name may at any time deliver to the registrar of companies for registration a statement specifying a different name under which it proposes to carry on business in the United Kingdom (which may be its corporate name or a further alternative) in substitution for the name previously registered.

- (3) The alternative name for the time being registered under this section is treated for all purposes of the law applying in the United Kingdom as the company's corporate name.
- (4) This does not –
  - (a) affect the references in this section or section 1047 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.
- (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*

**1049 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 1046 –
  - (a) to prepare the like accounts and directors' report, and
  - (b) to cause to be prepared such an auditor's report,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).
- (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.
- (4) Regulations under this section are subject to negative resolution procedure.

**1050 Accounts and reports: credit or financial institutions**

- (1) This section applies to a credit or financial institution –
  - (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.
- (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) to cause to be prepared such an auditor's report,
- as would be required if the institution were a company formed and registered under this Act.
- (4) The regulations may for this purpose apply, with or without modifications, all or any of the provisions of—
    - Part 15 (accounts and reports), and
    - Part 16 (audit).
  - (5) The Secretary of State may make provision by regulations requiring an institution to which this section applies to deliver to the registrar copies of—
    - (a) accounts and reports prepared in accordance with the regulations, or
    - (b) accounts and reports that it is required to prepare and have audited under the law of the country in which the institution has its head office.
  - (6) Regulations under this section are subject to negative resolution procedure.

#### **1051 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,
  - (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—
  - (a) shall in every case require a company that has registered particulars under section 1046 to disclose the name registered by it under section 1047, 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—
  - section 83 (civil consequences of failure to make required disclosure), and
  - section 84 (criminal consequences of failure to make required disclosure).
- (4) In this section “specified” means specified in the regulations.
- (5) Regulations under this section are subject to affirmative resolution procedure.

#### **1052 Company charges**

- (1) The Secretary of State may by regulations make provision about the registration of specified charges over property in the United Kingdom of a registered overseas company.
- (2) The power in subsection (1) includes power to make provision about—
  - (a) a registered overseas company that—
    - (i) has particulars registered in more than one part of the United Kingdom;
    - (ii) has property in more than one part of the United Kingdom;

- (b) the circumstances in which property is to be regarded, for the purposes of the regulations, as being, or not being, in the United Kingdom or in a particular part of the United Kingdom;
  - (c) the keeping by a registered overseas company of records and registers about specified charges and their inspection;
  - (d) the consequences of a failure to register a charge in accordance with the regulations;
  - (e) the circumstances in which a registered overseas company ceases to be subject to the regulations.
- (3) The regulations may for this purpose apply, with or without modifications, any of the provisions of Part 25 (company charges).
  - (4) The regulations may modify any reference in an enactment to Part 25, or to a particular provision of that Part, so as to include a reference to the regulations or to a specified provision of the regulations.
  - (5) Regulations under this section are subject to negative resolution procedure.
  - (6) In this section –
    - “registered overseas company” means an overseas company that has registered particulars under section 1046(1), and
    - “specified” means specified in the regulations.

### 1053 Other returns etc

- (1) This section applies to overseas companies that are required to register particulars under section 1046.
- (2) The Secretary of State may make provision by regulations requiring the delivery to the registrar of returns –
  - (a) by a company to which this section applies that –
    - (i) is being wound up, or
    - (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) The regulations may include provision corresponding to any provision made by section 1154 of this Act (duty to notify registrar of certain appointments).
- (6) Regulations under this section are subject to affirmative resolution procedure.

*Supplementary*

**1054 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.
- (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, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (4) In this section “specified” means specified in the regulations.

**1055 Disclosure of individual’s residential address: protection from disclosure**

Where regulations under section 1046 (overseas companies: duty to register particulars) require an overseas company to register particulars of an individual’s usual residential address, they must contain provision corresponding to that made by Chapter 8 of Part 10 (directors’ residential addresses: protection from disclosure).

**1056 Requirement to identify persons authorised to accept service of documents**

Regulations under section 1046 (overseas companies: duty to register particulars) must require an overseas company to register –

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

**1057 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 1046 in more than one part of the United Kingdom.
- (2) The Secretary of State may provide by regulations that, in the case of such a company, anything authorised or required to be delivered to the registrar under this Part is to be delivered –
  - (a) to the registrar for each part of the United Kingdom in which the company is required to register or has registered particulars, or
  - (b) to the registrar for such part or parts of the United Kingdom as may be specified in or determined in accordance with the regulations.
- (3) Regulations under this section are subject to negative resolution procedure.

**1058 Duty to give notice of ceasing to have registrable presence**

- (1) The Secretary of State may make provision by regulations requiring an overseas company –
  - (a) if it has registered particulars following the opening of a branch, in accordance with regulations under section 1046(2)(a) or (b), to give notice to the registrar if it closes that branch;
  - (b) if it has registered particulars in other circumstances, in accordance with regulations under section 1046(2)(c), to give notice to the registrar if the circumstances that gave rise to the obligation to register particulars cease to obtain.
- (2) The regulations must provide for the notice to be given to the registrar for the part of the United Kingdom to which the original return of particulars was delivered.
- (3) The regulations may specify the period within which notice must be given.
- (4) Regulations under this section are subject to negative resolution procedure.

**1059 Application of provisions in case of relocation of branch**

For the purposes of this Part –

- (a) the relocation of a branch from one part of the United Kingdom to another counts as the closing of one branch and the opening of another;
- (b) the relocation of a branch within the same part of the United Kingdom does not.

**PART 35**

## THE REGISTRAR OF COMPANIES

*The registrar***1060 The registrar**

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

**1061 The registrar’s functions**

- (1) The registrar shall continue –
  - (a) to perform the functions conferred on the registrar –



- (i) under the Companies Acts, and
  - (ii) under the enactments listed in subsection (2), and
- (b) to perform such functions on behalf of the Secretary of State, in relation to the registration of companies or other matters, as the Secretary of State may from time to time direct.
- (2) The enactments are –
- the Joint Stock Companies Acts;
  - the Newspaper Label and Registration Act 1881 (c. 60);
  - the Limited Partnerships Act 1907 (c. 24);
  - section 53 of the Industrial and Provident Societies Act 1965 (c. 12) or, for Northern Ireland, section 62 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));
  - the Insolvency Act 1986 (c. 45) or, for Northern Ireland, the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
  - section 12 of the Statutory Water Companies Act 1991 (c. 58);
  - sections 3, 4, 6, 63 and 64 of, and Schedule 1 to, the Housing Act 1996 (c. 52) or, for Northern Ireland, Articles 3 and 16 to 32 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));
  - 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));
  - section 121 of the Land Registration Act 2002 (c. 9);
  - section 1248 of this Act.
- (3) References in this Act to the functions of the registrar are to functions within subsection (1)(a) or (b).

### **1062 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.

### **1063 Fees payable to registrar**

- (1) The Secretary of State may make provision by regulations requiring the payment to the registrar of fees in respect of –
- (a) the performance of any of the registrar's functions, or
  - (b) the provision by the registrar of services or facilities for purposes incidental to, or otherwise connected with, the performance of any of the registrar's functions.
- (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.

- (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;
  - (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.
- (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,the registrar may determine from time to time what fees (if any) are chargeable.
- (6) Fees received by the registrar are to be paid into the Consolidated Fund.
- (7) The Limited Partnerships Act 1907 (c. 24) is amended as follows –
  - (a) in section 16(1) (inspection of statements registered) –
    - (i) omit the words “, and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding 5p for each inspection”, and
    - (ii) omit the words from “and there shall be paid for such certificate” to the end;
  - (b) in section 17 (power to make rules) –
    - (i) omit the words “(but as to fees with the concurrence of the Treasury)”, and
    - (ii) omit paragraph (a).

*Certificates of incorporation*

**1064 Public notice of issue of certificate of incorporation**

- (1) The registrar must cause to be published –
  - (a) in the Gazette, or
  - (b) in accordance with section 1116 (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 and registered number of the company and the date of issue of the certificate.
- (3) This section applies to a certificate of incorporation issued under –
  - (a) section 80 (change of name),
  - (b) section 88 (Welsh companies), or
  - (c) any provision of Part 7 (re-registration),as well as to the certificate issued on a company’s formation.

### **1065 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.

#### *Registered numbers*

### **1066 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.
- (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.
- (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 1051 (trading disclosures) is satisfied by the use of either the old number or the new.
- (6) In this section "company" includes an overseas company whose particulars have been registered under section 1046, other than a company that appears to the registrar not to be required to register particulars under that section.

### **1067 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 1046 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.
- (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 1051 (trading disclosures) is satisfied by the use of either the old number or the new.

*Delivery of documents to the registrar***1068 Registrar's requirements as to form, authentication and manner of delivery**

- (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) 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.
- (3) 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;
  - (c) require the document to contain or be accompanied by the name or registered number of the company to which it relates (or both).
- (4) As regards the manner of delivery, the registrar may specify requirements as to –
  - (a) the physical form of the document (for example, hard copy or electronic form);
  - (b) the means to be used for delivering the document (for example, by post or electronic means);
  - (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).
- (5) The registrar must secure that as from 1st January 2007 all documents subject to the Directive disclosure requirements (see section 1078) may be delivered to the registrar by electronic means.
- (6) The power conferred by this section does not authorise the registrar to require documents to be delivered by electronic means (see section 1069).
- (7) Requirements imposed under this section must not be inconsistent with requirements imposed by any enactment with respect to the form, authentication or manner of delivery of the document concerned.

**1069 Power to require delivery by electronic means**

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

### **1070 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 –
  - (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.
- (3) Documents in relation to which an agreement is in force under this section must be delivered in accordance with the agreement.

### **1071 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.

#### *Requirements for proper delivery*

### **1072 Requirements for proper delivery**

- (1) A document delivered to the registrar is not properly delivered unless all the following requirements are met –
  - (a) the requirements of the provision under which the document is to be delivered to the registrar as regards –
    - (i) the contents of the document, and
    - (ii) form, authentication and manner of delivery;
  - (b) any applicable requirements under –  
section 1068 (registrar's requirements as to form, authentication and manner of delivery),  
section 1069 (power to require delivery by electronic means), or  
section 1070 (agreement for delivery by electronic means);
  - (c) any requirements of this Part as to the language in which the document is drawn up and delivered or as to its being accompanied on delivery by a certified translation into English;
  - (d) in so far as it consists of or includes names and addresses, any requirements of this Part as to permitted characters, letters or symbols or as to its being accompanied on delivery by a certificate as to the transliteration of any element;
  - (e) any applicable requirements under section 1111 (registrar's requirements as to certification or verification);
  - (f) any requirement of regulations under section 1082 (use of unique identifiers);
  - (g) any requirements as regards payment of a fee in respect of its receipt by the registrar.
- (2) A document that is not properly delivered is treated for the purposes of the provision requiring or authorising it to be delivered as not having been

delivered, subject to the provisions of section 1073 (power to accept documents not meeting requirements for proper delivery).

### **1073 Power to accept documents not meeting requirements for proper delivery**

- (1) The registrar may accept (and register) a document that does not comply with the requirements for proper delivery.
- (2) A document accepted by the registrar under this section is treated as received by the registrar for the purposes of section 1077 (public notice of receipt of certain documents).
- (3) No objection may be taken to the legal consequences of a document's being accepted (or registered) by the registrar under this section on the ground that the requirements for proper delivery were not met.
- (4) The acceptance of a document by the registrar under this section does not affect –
  - (a) the continuing obligation to comply with the requirements for proper delivery, or
  - (b) subject as follows, any liability for failure to comply with those requirements.
- (5) For the purposes of –
  - (a) section 453 (civil penalty for failure to file accounts and reports), and
  - (b) any enactment imposing a daily default fine for failure to deliver the document,the period after the document is accepted does not count as a period during which there is default in complying with the requirements for proper delivery.
- (6) But if, subsequently –
  - (a) the registrar issues a notice under section 1094(4) in respect of the document (notice of administrative removal from the register), and
  - (b) the requirements for proper delivery are not complied with before the end of the period of 14 days after the issue of that notice,any subsequent period of default does count for the purposes of those provisions.

### **1074 Documents containing unnecessary material**

- (1) This section applies where a document delivered to the registrar contains unnecessary material.
- (2) “Unnecessary material” means material that –
  - (a) is not necessary in order 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.
- (4) If the unnecessary material cannot readily be separated from the rest of the document, the document is treated as not meeting the requirements for proper delivery.

- (5) If the unnecessary material can readily be separated from the rest of the document, the registrar may register the document either –
  - (a) with the omission of the unnecessary material, or
  - (b) as delivered.

#### **1075 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
  - (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;
  - (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 –
    - (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) This section applies in relation to documents delivered under Part 25 (company 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.
- (7) The power conferred by this section is not exercisable if the document has been registered under section 1073 (power to accept documents not meeting requirements for proper delivery).

#### **1076 Replacement of document not meeting requirements for proper delivery**

- (1) The registrar may accept a replacement for a document previously delivered that –
  - (a) did not comply with the requirements for proper delivery, or
  - (b) contained unnecessary material (within the meaning of section 1074).
- (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.
- (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) This section does not apply where the original document was delivered under Part 25 (company charges) (but see sections 873 and 888 (rectification of register of charges)).

*Public notice of receipt of certain documents*

**1077 Public notice of receipt of certain documents**

- (1) The registrar must cause to be published –
  - (a) in the Gazette, or
  - (b) in accordance with section 1116 (alternative means of giving public notice),
 notice of the receipt by the registrar of any document that, on receipt, is subject to the Directive disclosure requirements (see section 1078).
- (2) The notice must state the name and registered number of the company, the description of document and the date of receipt.
- (3) The registrar is not required to cause notice of the receipt of a document to be published before the date of incorporation of the company to which the document relates.

**1078 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.

- (2) In the case of every company –
  - Constitutional documents*
    - 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).
    - 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.
  - Directors*
    - 1. The statement of proposed officers required on formation of the company.
    - 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.
  - Accounts, reports and returns*



1. All documents required to be delivered to the registrar under section 441 (annual accounts and reports).
2. The company's annual return.

*Registered office*

Notification of any change of the company's registered office.

*Winding up*

1. Copy of any winding-up order in respect of the company.
2. Notice of the appointment of liquidators.
3. Order for the dissolution of a company on a winding up.
4. Return by a liquidator of the final meeting of a company on a winding up.

(3) In the case of a public company –

*Share capital*

1. Any statement of capital and initial shareholdings.
2. Any return of allotment and the statement of capital accompanying it.
3. Copy of any resolution under section 570 or 571 (disapplication of pre-emption rights).
4. Copy of any report under section 593 or 599 as to the value of a non-cash asset.
5. Statement of capital accompanying notice given under section 625 (notice by company of redenomination of shares).
6. Statement of capital accompanying notice given under section 627 (notice by company of reduction of capital in connection with redenomination of shares).
7. Notice delivered under section 636 (notice of new name of class of shares) or 637 (notice of variation of rights attached to shares).
8. Statement of capital accompanying order delivered under section 649 (order of court confirming reduction of capital).
9. Notification (under section 689) of the redemption of shares and the statement of capital accompanying it.
10. Statement of capital accompanying return delivered under section 708 (notice of cancellation of shares on purchase of own shares) or 730 (notice of cancellation of shares held as treasury shares).
11. Any statement of compliance delivered under section 762 (statement that company meets conditions for issue of trading certificate).

*Mergers and divisions*

1. Copy of any draft of the terms of a scheme required to be delivered to the registrar under section 906 or 921.
2. Copy of any order under section 899 or 900 in respect of a compromise or arrangement to which Part 27 (mergers and divisions of public companies) applies.

- (4) Where a private company re-registers as a public company (see section 96) –
  - (a) the last statement of capital relating to the company received by the registrar under any provision of the Companies Acts becomes subject to the Directive disclosure requirements, and
  - (b) section 1077 (public notice of receipt of certain documents) applies as if the statement had been received by the registrar when the re-registration takes effect.
- (5) In the case of an overseas company, such particulars, returns and other documents required to be delivered under Part 34 as may be specified by the Secretary of State by regulations.

- (6) Regulations under subsection (5) are subject to negative resolution procedure.

### 1079 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.
- (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,
  - (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 –
- (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.
- (4) “Official notification” means –
- (a) in relation to an amendment of the company’s articles, notification in accordance with section 1077 (public notice of receipt by registrar of certain documents) of the amendment and the amended text of the articles;
  - (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)).

### *The register*

### 1080 The register

- (1) The registrar shall continue to keep records of –
- (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 869(5) or 885(4) (certificates of registration of charge).
- (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 1078) 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.  
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.

### 1081 Annotation of the register

- (1) The registrar must place a note in the register recording –
  - (a) the date on which a document is delivered to the registrar;
  - (b) if a document is corrected under section 1075, 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;
  - (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 –
  - (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 1072(2) (documents not meeting requirements for proper delivery) is treated as not having been delivered.
- (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 1097 (powers of court on ordering removal of material from the register) to direct –
  - (a) that a note be removed from the register, or
  - (b) that no note shall be made of the removal of material that is the subject of the court's order.
- (6) Notes placed in the register in accordance with subsection (1), or in pursuance of regulations under subsection (2), are part of the register for all purposes of the Companies Acts.
- (7) Regulations under this section are subject to negative resolution procedure.

**1082 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,
  - (b) is secretary (or a joint secretary) of a company, or
  - (c) in the case of an overseas company whose particulars are registered under section 1046, holds any such position as may be specified for the purposes of this section by regulations under that section.
- (2) The regulations may –
  - (a) provide that a unique identifier may be in such form, consisting of one or more sequences of letters or numbers, as the registrar may from time to time determine;
  - (b) make provision for the allocation of unique identifiers by the registrar;
  - (c) require there to be included, in any specified description of documents delivered to the registrar, as well as a statement of the person’s name –
    - (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.
- (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.
- (5) Regulations under this section are subject to affirmative resolution procedure.

**1083 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.

This is subject to section 1087(3) (extent of obligation to retain material not available for public inspection).
- (2) The registrar is under no obligation to keep the originals of documents delivered in electronic form, provided the information contained in them has been recorded in the register.
- (3) This section applies to documents held by the registrar when this section comes into force as well as to documents subsequently received.

**1084 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 1046, or
  - (c) a credit or financial institution ceases to be within section 1050 (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—
- (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 1046, or
  - (c) the credit or financial institution has ceased to be within section 1050 (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 Record Office of 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.
- (4) In subsection (1)(a) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844 (c. 110).
- (5) This section does not extend to Scotland.

*Inspection etc of the register*

**1085 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.  
The period for which such originals are to be kept is limited by section 1083(1).
- (3) This section has effect subject to section 1087 (material not available for public inspection).

**1086 Right to copy of material on the register**

- (1) Any person may require a copy of any material on the register.
- (2) The fee for any such copy of material derived from a document subject to the Directive disclosure requirements (see section 1078), whether in hard copy or electronic form, must not exceed the administrative cost of providing it.
- (3) This section has effect subject to section 1087 (material not available for public inspection).

**1087 Material not available for public inspection**

- (1) The following material must not be made available by the registrar for public inspection—

- 
- (a) the contents of any document sent to the registrar containing views expressed pursuant to section 56 (comments on proposal by company to use certain words or expressions in company name);
  - (b) protected information within section 242(1) (directors' residential addresses: restriction on disclosure by registrar) or any corresponding provision of regulations under section 1046 (overseas companies);
  - (c) any application to the registrar under section 1024 (application for administrative restoration to the register) that has not yet been determined or was not successful;
  - (d) any document received by the registrar in connection with the giving or withdrawal of consent under section 1075 (informal correction of documents);
  - (e) any application or other document delivered to the registrar under section 1088 (application to make address unavailable for public inspection) and any address in respect of which such an application is successful;
  - (f) any application or other document delivered to the registrar under section 1095 (application for rectification of register);
  - (g) any court order under section 1096 (rectification of the register under court order) that the court has directed under section 1097 (powers of court on ordering removal of material from the register) is not to be made available for public inspection;
  - (h) the contents of –
    - (i) any instrument creating or evidencing a charge and delivered to the registrar under section 860 (registration of company charges: England and Wales or Northern Ireland), or
    - (ii) any certified copy of an instrument creating or evidencing a charge and delivered to the registrar under section 878 (registration of company charges: Scotland);
  - (i) any e-mail address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone;
  - (j) the contents of any documents held by the registrar pending a decision of the Regulator 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;
  - (k) any other material excluded from public inspection by or under any other enactment.
- (2) A restriction applying by reference to material deriving from a particular description of document does not affect the availability for public inspection of the same information contained in material derived from another description of document in relation to which no such restriction applies.
- (3) Material to which this section applies need not be retained by the registrar for longer than appears to the registrar reasonably necessary for the purposes for which the material was delivered to the registrar.

### **1088 Application to registrar to make address unavailable for public inspection**

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

### **1089 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 1085, or
  - (b) a copy under section 1086.
- (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.

### **1090 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 1086.
- (2) As from 1st January 2007, copies of documents subject to the Directive disclosure requirements must be provided in hard copy or electronic form, as the applicant chooses.  
This is subject to the following proviso.
- (3) The registrar is not obliged by subsection (2) to provide copies in electronic form of a document that was delivered to the registrar in hard copy form if –

- (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.
- (4) Subject to the preceding provisions of this section, the registrar may determine the form and manner in which copies are to be provided.

#### **1091 Certification of copies as accurate**

- (1) Copies provided under section 1086 in hard copy form must be certified as true copies unless the applicant dispenses with such certification.
- (2) Copies so provided in electronic form must not be certified as true copies unless the applicant expressly requests such certification.
- (3) A copy provided under section 1086, 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 –
  - (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.
- (5) Except in the case of documents that are subject to the Directive disclosure requirements (see section 1078), 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.

#### **1092 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.
- (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*

#### **1093 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.
- (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.
- (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.

#### **1094 Administrative removal of material from the register**

- (1) The registrar may remove from the register anything that there was power, but no duty, to include.
- (2) This power is exercisable, in particular, so as to remove –
  - (a) unnecessary material within the meaning of section 1074, and
  - (b) material derived from a document that has been replaced under –
    - section 1076 (replacement of document not meeting requirements for proper delivery), or
    - section 1093 (notice to remedy inconsistency on the register).
- (3) This section does not authorise the removal from the register of –
  - (a) anything whose registration has had legal consequences in relation to the company as regards –
    - (i) its formation,
    - (ii) a change of name,
    - (iii) its re-registration,
    - (iv) its becoming or ceasing to be a community interest company,
    - (v) a reduction of capital,
    - (vi) a change of registered office,
    - (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 1140 (service of documents on directors, secretaries and others).
- (4) On or before removing any material under this section (otherwise than at the request of the company) the registrar must give notice –
  - (a) to the person by whom the material was delivered (if the identity, and name and address of that person are known), or
  - (b) to the company to which the material relates (if notice cannot be given under paragraph (a) and the identity of that company is known).
- (5) The notice must –
  - (a) state what material the registrar proposes to remove, or has removed, and on what grounds, and
  - (b) state the date on which it is issued.

**1095 Rectification of register on application to registrar**

- (1) The Secretary of State may make provision by regulations requiring the registrar, on application, to remove from the register material of a description specified in the regulations that –
  - (a) derives from anything invalid or ineffective or that was done without the authority of the company, or
  - (b) is factually inaccurate, or is derived from something that is factually inaccurate or forged.
- (2) The regulations may make provision as to –
  - (a) who may make an application,
  - (b) the information to be included in and documents to accompany an application,
  - (c) the notice to be given of an application and of its outcome,
  - (d) a period in which objections to an application may be made, and
  - (e) how an application is to be determined.
- (3) An application must –
  - (a) specify what is to be removed from the register and indicate where on the register it is, and
  - (b) be accompanied by a statement that the material specified in the application complies with this section and the regulations.
- (4) If no objections are made to the application, the registrar may accept the statement as sufficient evidence that the material specified in the application should be removed from the register.
- (5) Where anything is removed from the register under this section the registration of which had legal consequences as mentioned in section 1094(3), any person appearing to the court to have a sufficient interest may apply to the court for such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register.
- (6) Regulations under this section are subject to affirmative resolution procedure.

**1096 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, 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.
- (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 1094(3) unless satisfied –
  - (a) that the presence of the material on the register has caused, or may cause, damage to the company, and

- (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.
- (5) A copy of the court's order must be sent to the registrar for registration.
- (6) This section does not apply where the court has other, specific, powers to deal with the matter, for example under –
  - (a) the provisions of Part 15 relating to the revision of defective accounts and reports, or
  - (b) section 873 or 888 (rectification of the register of charges).

#### **1097 Powers of court on ordering removal of material from the register**

- (1) Where the court makes an order for the removal of anything from the register under section 1096 (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.
- (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.
- (5) The court shall not give any direction under this section unless it is satisfied –
  - (a) that –
    - (i) the presence on the register of the note or, as the case may be, of an unrestricted note, or
    - (ii) the availability for public inspection of the court's order, may cause damage to the company, and
  - (b) that the company's interest in non-disclosure outweighs any interest of other persons in disclosure.

#### **1098 Public notice of removal of certain material from the register**

- (1) The registrar must cause to be published –
  - (a) in the Gazette, or
  - (b) in accordance with section 1116 (alternative means of giving public notice),notice of the removal from the register of any document subject to the Directive disclosure requirements (see section 1078) or of any material derived from such a document.
- (2) The notice must state the name and registered number of the company, the description of document and the date of receipt.

*The registrar's index of company names***1099 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 –
  - (a) UK-registered companies;
  - (b) any body to which any provision of the Companies Acts applies by virtue of regulations under section 1043 (unregistered companies); and
  - (c) overseas companies that have registered particulars with the registrar under section 1046, other than companies that appear to the registrar not to be required to do so.
- (3) This section also applies to –
  - (a) limited partnerships registered in the United Kingdom;
  - (b) limited liability partnerships incorporated in the United Kingdom;
  - (c) European Economic Interest Groupings registered in the United Kingdom;
  - (d) open-ended investment companies authorised in the United Kingdom;
  - (e) societies registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)).
- (4) The Secretary of State may by order amend subsection (3) –
  - (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.

**1100 Right to inspect index**

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

**1101 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 1099(3) (bodies other than companies whose names are to be entered in the registrar's index), so as to –
  - (a) require the registrar to be provided with information as to the names of bodies registered, incorporated, authorised or otherwise regulated under those enactments, and
  - (b) make provision in relation to such bodies corresponding to that made by –
    - section 66 (company name not to be the same as another in the index), and
    - sections 67 and 68 (power to direct change of company name in case of similarity to existing name).
- (2) Regulations under this section are subject to affirmative resolution procedure.

*Language requirements: translation*

**1102 Application of language requirements**

- (1) The provisions listed below apply to all documents required to be delivered to the registrar under any provision of—
  - (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.
- (3) The provisions are—
  - section 1103 (documents to be drawn up and delivered in English),
  - section 1104 (documents relating to Welsh companies),
  - section 1105 (documents that may be drawn up and delivered in other languages),
  - section 1107 (certified translations).
- (4) Regulations under this section are subject to negative resolution procedure.

**1103 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.
- (2) This is subject to—
  - section 1104 (documents relating to Welsh companies) and
  - section 1105 (documents that may be drawn up and delivered in other languages).

**1104 Documents relating to Welsh companies**

- (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
  - (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.  
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.

- (5) Section 1105 (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.

### **1105 Documents that may be drawn up and delivered in other languages**

- (1) Documents to which this section applies may be drawn up and delivered to the registrar in a language other than English, but when delivered to the registrar they must be accompanied by a certified translation into English.
- (2) This section applies to –
- (a) agreements required to be forwarded to the registrar under Chapter 3 of Part 3 (agreements affecting the company's constitution);
  - (b) documents required to be delivered under section 400(2)(e) or section 401(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 25 (company charges);
  - (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.

### **1106 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.
- (2) The Secretary of State may by regulations specify –
- (a) the languages, and
  - (b) the descriptions of document,
- 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 1078).
- (4) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the translation in a form and manner enabling it to be associated with the original.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) This section does not apply where the original document was delivered to the registrar before this section came into force.

### **1107 Certified translations**

- (1) In this Part a “certified translation” means a translation certified to be a correct translation.
- (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.
- (3) A “third party” means a person other than the company or the registrar.

*Language requirements: transliteration*

**1108 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.
- (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
  - (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.

**1109 Transliteration of names and addresses: voluntary transliteration into Roman characters**

- (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.

**1110 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.
- (2) Different provision may be made for compulsory and voluntary transliterations.
- (3) Regulations under this section are subject to negative resolution procedure.

*Supplementary provisions*

**1111 Registrar’s requirements as to certification or verification**

- (1) Where a document required or authorised to be delivered to the registrar under any enactment is required –
  - (a) to be certified as an accurate translation or transliteration, 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.

- (2) The power conferred by section 1068 (registrar's requirements as to form, authentication and manner of delivery) is exercisable in relation to the certificate or verification as if it were a separate document.
- (3) Requirements imposed under this section must not be inconsistent with requirements imposed by any enactment with respect to the certification or verification of the document concerned.

#### **1112 General false statement offence**

- (1) It is an offence for a person knowingly or recklessly –
  - (a) to deliver or cause to be delivered to the registrar, for any purpose of the Companies Acts, a document, or
  - (b) to make to the registrar, for any such purpose, a statement, that is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (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).

#### **1113 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.
- (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.
- (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.

#### **1114 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.
- (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.

#### **1115 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.
- (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.

#### **1116 Alternative to publication in the Gazette**

- (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 –
- (a) require the use of electronic means;
  - (b) require the same means to be used –
    - (i) for all notices or for all notices of specified descriptions, and
    - (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.
- (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.

#### **1117 Registrar’s rules**

- (1) Where any provision of this Part enables the registrar to make provision, or impose requirements, as to any matter, the registrar may make such provision or impose such requirements by means of rules under this section.
- This is without prejudice to the making of such provision or the imposing of such requirements by other means.

- (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 –
  - (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).

### **1118 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).

### **1119 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 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.
- (3) Registrar's rules are not subordinate legislation for the purposes of section 71 of the Deregulation and Contracting Out Act 1994 (functions excluded from contracting out).

### **1120 Application of this Part to overseas companies**

Unless the context otherwise requires, the provisions of this Part apply to an overseas company as they apply to a company as defined in section 1.

## **PART 36**

### OFFENCES UNDER THE COMPANIES ACTS

#### *Liability of officer in default*

### **1121 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.
- (2) For this purpose "officer" includes –
  - (a) any director, manager or secretary, and

- (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.

### **1122 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.
- (3) In this section “officer” and “in default” have the meanings given by section 1121.

### **1123 Application to bodies other than companies**

- (1) Section 1121 (liability of officers in default) applies to a body other than a company as it applies to a company.
- (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,
    - (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
  - (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 –
    - (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.

### *Offences under the Companies Act 1985*

### **1124 Amendments of the Companies Act 1985**

Schedule 3 contains amendments of the Companies Act 1985 (c. 6) relating to offences.

*General provisions***1125 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, for continued contravention, 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).

**1126 Consents required for certain prosecutions**

- (1) This section applies to proceedings for an offence under any of the following provisions –
  - section 458, 460 or 949 of this Act (offences of unauthorised disclosure of information);
  - section 953 of this Act (failure to comply with rules about takeover bid documents);
  - section 448, 449, 450, 451 or 453A of the Companies Act 1985 (c. 6) (offences in connection with company investigations);
  - section 798 of this Act or section 455 of the Companies Act 1985 (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 458, 460 or 949 of this Act,
    - (ii) section 953 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 798 of this Act or 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 –
  - (a) in the case of an offence under –
    - (i) section 458, 460 or 949 of this Act,
    - (ii) section 953 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 for Northern Ireland;
  - (b) in the case of an offence under section 798 of this Act or section 455 of the Companies Act 1985, the Secretary of State.

**1127 Summary proceedings: venue**

- (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.
- (2) This is without prejudice to any jurisdiction exercisable apart from this section.

### **1128 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
  - (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;
  - (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
    - (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.

- (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
  - (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.

### **1129 Legal professional privilege**

In proceedings against a person for an offence under the Companies Acts, nothing in those Acts is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).

**1130 Proceedings against unincorporated bodies**

- (1) Proceedings for an offence under the Companies Acts alleged to have been committed by an unincorporated body must be brought in the name of the body (and not in that of any of its members).
- (2) For the purposes of such proceedings—
  - (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),
    - (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)).
- (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.

**1131 Imprisonment on summary conviction in England and Wales: transitory provision**

- (1) This section applies to any provision of the Companies Acts that provides that a person guilty of an offence is liable on summary conviction in England and Wales to imprisonment for a term not exceeding twelve months.
- (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”.

*Production and inspection of documents***1132 Production and inspection of documents where offence suspected**

- (1) An application under this section may be made—
  - (a) in England and Wales, to a judge of the High Court by the Director of Public Prosecutions, the Secretary of State or a chief officer of police;
  - (b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate;
  - (c) in Northern Ireland, to the High Court by the Director of Public Prosecutions for Northern Ireland, the Department of Enterprise, Trade and Investment or a chief superintendent of the Police Service of Northern Ireland.
- (2) If on an application under this section there is shown to be reasonable cause to believe—
  - (a) that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs, and

- (b) that evidence of the commission of the offence is to be found in any documents in the possession or control of the company, an order under this section may be made.
- (3) The order may –
- (a) authorise any person named in it to inspect the documents in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or
  - (b) require the secretary of the company, or such other officer of it as may be named in the order, to produce the documents (or any of them) to a person named in the order at a place so named.
- (4) This section applies also in relation to documents in the possession or control of a person carrying on the business of banking, so far as they relate to the company's affairs, as it applies to documents in the possession or control of the company, except that no such order as is referred to in subsection (3)(b) may be made by virtue of this subsection.
- (5) The decision under this section of a judge of the High Court, any of the Lords Commissioners of Justiciary or the High Court is not appealable.
- (6) In this section “document” includes information recorded in any form.

### *Supplementary*

#### **1133 Transitional provision**

The provisions of this Part except section 1132 do not apply to offences committed before the commencement of the relevant provision.

## **PART 37**

### COMPANIES: SUPPLEMENTARY PROVISIONS

#### *Company records*

#### **1134 Meaning of “company records”**

In this Part “company records” means –

- (a) any register, index, accounting records, agreement, memorandum, minutes or other document required by the Companies Acts to be kept by a company, and
- (b) any register kept by a company of its debenture holders.

#### **1135 Form of company records**

- (1) Company records –
- (a) may be kept in hard copy or electronic form, and
  - (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.
- (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.
- (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.

### **1136 Regulations about where certain company records to be kept available for inspection**

- (1) The Secretary of State may make provision by regulations specifying places other than a company's registered office at which company records required to be kept available for inspection under a relevant provision may be so kept in compliance with that provision.
- (2) The "relevant provisions" are –
  - section 114 (register of members);
  - section 162 (register of directors);
  - section 228 (directors' service contracts);
  - section 237 (directors' indemnities);
  - section 275 (register of secretaries);
  - section 358 (records of resolutions etc);
  - section 702 (contracts relating to purchase of own shares);
  - section 720 (documents relating to redemption or purchase of own shares out of capital by private company);
  - section 743 (register of debenture holders);
  - section 805 (report to members of outcome of investigation by public company into interests in its shares);
  - section 809 (register of interests in shares disclosed to public company);
  - section 877 (instruments creating charges and register of charges: England and Wales);
  - section 892 (instruments creating charges and register of charges: Scotland).
- (3) The regulations may specify a place by reference to the company's principal place of business, the part of the United Kingdom in which the company is registered, the place at which the company keeps any other records available for inspection or in any other way.
- (4) The regulations may provide that a company does not comply with a relevant provision by keeping company records available for inspection at a place specified in the regulations unless conditions specified in the regulations are met.
- (5) The regulations –
  - (a) need not specify a place in relation to each relevant provision;



- (b) may specify more than one place in relation to a relevant provision.
- (6) A requirement under a relevant provision to keep company records available for inspection is not complied with by keeping them available for inspection at a place specified in the regulations unless all the company's records subject to the requirement are kept there.
- (7) Regulations under this section are subject to negative resolution procedure.

### **1137 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 keep available for inspection any company records, or
  - (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
  - (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.
- (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.

### **1138 Duty to take precautions against falsification**

- (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.
- (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.
- (4) This section does not apply to the documents required to be kept under –
  - (a) section 228 (copy of director's service contract or memorandum of its terms); or

- (b) section 237 (qualifying indemnity provision).

*Service addresses*

**1139 Service of documents on company**

- (1) A document may be served on a company registered under this Act 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 1046 –
  - (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.
- (3) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.
- (4) Where a company registered in Scotland or Northern Ireland 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.

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.
- (5) Further provision as to service and other matters is made in the company communications provisions (see section 1143).

**1140 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.
- (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 1046, a person holding any such position as may be specified for the purposes of this section by regulations under that section;
  - (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
    - (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.

It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.

- (4) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.
- (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 –
  - (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 1046.
- (7) Further provision as to service and other matters is made in the company communications provisions (see section 1143).
- (8) 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.

#### **1141 Service addresses**

- (1) In the Companies Acts a "service address", in relation to a person, means an address at which documents may be effectively served on that person.
- (2) The Secretary of State may by regulations specify conditions with which a service address must comply.
- (3) Regulations under this section are subject to negative resolution procedure.

#### **1142 Requirement to give service address**

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

#### *Sending or supplying documents or information*

#### **1143 The company communications provisions**

- (1) The provisions of sections 1144 to 1148 and Schedules 4 and 5 ("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.
- (2) The company communications provisions have effect subject to any requirements imposed, or contrary provision made, by or under any enactment.

- (3) In particular, in their application in relation to documents or information to be sent or supplied to the registrar, they have effect subject to the provisions of Part 35.
- (4) For the purposes of subsection (2), provision is not to be regarded as contrary to the company communications provisions by reason only of the fact that it expressly authorises a document or information to be sent or supplied in hard copy form, in electronic form or by means of a website.

#### **1144 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 4.
- (2) Documents or information to be sent or supplied by a company must be sent or supplied in accordance with the provisions of Schedule 5.
- (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.

#### **1145 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.
- (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.
- (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.

#### **1146 Requirement of authentication**

- (1) This section applies in relation to the authentication of a document or information sent or supplied by a person to a company.
- (2) A document or information sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.
- (3) A document or information sent or supplied in electronic form is sufficiently authenticated –
  - (a) if the identity of the sender is confirmed in a manner specified by the company, or
  - (b) where no such manner has been specified by the company, if the communication contains or is accompanied by a statement of the

identity of the sender and the company has no reason to doubt the truth of that statement.

- (4) Where a document or information is sent or supplied by one person on behalf of another, nothing in this section affects any provision of the company's articles under which the company may require reasonable evidence of the authority of the former to act on behalf of the latter.

#### **1147 Deemed delivery of documents and information**

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

#### **1148 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;
  - “company” includes any body corporate;

“document” includes summons, notice, order or other legal process and registers.

- (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.
- (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.

*Requirements as to independent valuation*

**1149 Application of valuation requirements**

The provisions of sections 1150 to 1153 apply to the valuation and report required by –

- section 93 (re-registration as public company: recent allotment of shares for non-cash consideration);
- section 593 (allotment of shares of public company in consideration of non-cash asset);
- section 599 (transfer of non-cash asset to public company).

**1150 Valuation by qualified independent person**

- (1) The valuation and report must be made by a person (“the valuer”) who –
  - (a) is eligible for appointment as a statutory auditor (see section 1212), and
  - (b) meets the independence requirement in section 1151.
- (2) However, where it appears to the valuer to be reasonable for the valuation of the consideration, or part of it, to be made by (or for him to accept a valuation made by) another person who –
  - (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it, and
  - (b) is not an officer or employee of –
    - (i) the company, or
    - (ii) any other body corporate that is that company’s subsidiary or holding company or a subsidiary of that company’s holding company,
 or a partner of or employed by any such officer or employee,
 he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this section.
- (3) The references in subsection (2)(b) to an officer or employee do not include an auditor.
- (4) Where the consideration or part of it is valued by a person other than the valuer himself, the latter’s report must state that fact and shall also –
  - (a) state the former’s name and what knowledge and experience he has to carry out the valuation, and

- (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of that valuation.

### **1151 The independence requirement**

- (1) A person meets the independence requirement for the purposes of section 1150 only if—
  - (a) he is not—
    - (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;
  - (b) he is not—
    - (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; and
  - (c) there does not exist 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.
- (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 1152.
- (4) Regulations under this section are subject to negative resolution procedure.

### **1152 Meaning of “associate”**

- (1) This section defines “associate” for the purposes of section 1151 (valuation: independence requirement).
- (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.
- (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.

- (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.
- (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”.

### 1153 Valuer entitled to full disclosure

- (1) A person carrying out a valuation or making a report with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to –
  - (a) carry out the valuation or make the report, and
  - (b) provide any note required by section 596(3) or 600(3) (note required where valuation carried out by another person).
- (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 –
  - (a) made (whether orally or in writing) to a person carrying out a valuation or making a report, and
  - (b) conveying or purporting to convey any information or explanation which that person requires, or is entitled to require, under subsection (1).
- (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 –
    - (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).

#### *Notice of appointment of certain officers*

### 1154 Duty to notify registrar of certain appointments etc

- (1) Notice must be given to the registrar of the appointment in relation to a company of –
  - (a) a judicial factor (in Scotland),
  - (b) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or



- (c) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
- (2) The notice must be given –
- (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 (c. 10), by the Charity Commission;
  - (c) in the case of appointment of a manager under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, by the Regulator of Community Interest Companies.
- (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).

#### **1155 Offence of failure to give notice**

- (1) If a judicial factor fails to give notice of his appointment in accordance with section 1154 within the period of 14 days after the appointment he commits an offence.
- (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*

#### **1156 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;
  - (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.
- (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.

- (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).

### 1157 Power of court to grant relief in certain cases

- (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),

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—
- (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.
- (3) 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.

## PART 38

### COMPANIES: INTERPRETATION

#### *Meaning of "UK-registered company"*

### 1158 Meaning of “UK-registered company”

In the Companies Acts “UK-registered company” means a company registered under this Act.

The expression does not include an overseas company that has registered particulars under section 1046.

#### *Meaning of "subsidiary" and related expressions*

### 1159 Meaning of “subsidiary” etc

- (1) A company is a “subsidiary” of another company, its “holding company”, if that other company—

- (a) holds a majority of the voting rights in it, or
  - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
  - (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it,
- or if it is a subsidiary of a company that is itself a subsidiary of that other company.
- (2) A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other’s wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
  - (3) Schedule 6 contains provisions explaining expressions used in this section and otherwise supplementing this section.
  - (4) In this section and that Schedule “company” includes any body corporate.

#### **1160 Meaning of “subsidiary” etc: power to amend**

- (1) The Secretary of State may by regulations amend the provisions of section 1159 (meaning of “subsidiary” etc) and Schedule 6 (meaning of “subsidiary” etc: supplementary provisions) so as to alter the meaning of the expressions “subsidiary”, “holding company” or “wholly-owned subsidiary”.
- (2) Regulations under this section are subject to negative resolution procedure.
- (3) Any amendment made by regulations under this section does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.
- (4) So much of section 23(3) of the Interpretation Act 1978 (c. 30) as applies section 17(2)(a) of that Act (effect of repeal and re-enactment) to deeds, instruments and documents other than enactments does not apply in relation to any repeal and re-enactment effected by regulations under this section.

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

#### **1161 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.
- (2) In the Companies Acts references to shares –
  - (a) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and
  - (b) in relation to an undertaking without capital, are to interests –
    - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.
- (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) 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.

### **1162 Parent and subsidiary undertakings**

- (1) This section (together with Schedule 7) 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.
- (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.
- (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.
- (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.
- (6) Schedule 7 contains provisions explaining expressions used in this section and otherwise supplementing this section.

- (7) In this section and that Schedule references to shares, in relation to an undertaking, are to allotted shares.

*Other definitions*

**1163 “Non-cash asset”**

- (1) In the Companies Acts “non-cash asset” means any property or interest in property, other than cash.  
For this purpose “cash” includes foreign currency.
- (2) A reference to the transfer or acquisition of a non-cash asset includes –
- (a) the creation or extinction of an estate or interest in, or a right over, any property, and
  - (b) the discharge of a liability of any person, other than a liability for a liquidated sum.

**1164 Meaning of “banking company” and “banking group”**

- (1) This section defines “banking company” and “banking group” for the purposes of the Companies Acts.
- (2) “Banking company” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, other than –
- (a) a person who is not a company, and
  - (b) a person who has such permission only for the purpose of carrying on another regulated activity in accordance with permission under that Part.
- (3) The definition in subsection (2) must be read with section 22 of that Act, any relevant order under that section and Schedule 2 to that Act.
- (4) References to a banking group are to a group where the parent company is a banking company or where –
- (a) the parent company’s principal subsidiary undertakings are wholly or mainly credit institutions, and
  - (b) the parent company does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings.
- “Group” here means a parent undertaking and its subsidiary undertakings.
- (5) For the purposes of subsection (4) –
- (a) a parent company’s principal subsidiary undertakings are the subsidiary undertakings of the company whose results or financial position would principally affect the figures shown in the group accounts, and
  - (b) the management of interests in subsidiary undertakings includes the provision of services to such undertakings.

**1165 Meaning of “insurance company” and related expressions**

- (1) This section defines “insurance company”, “authorised insurance company”, “insurance group” and “insurance market activity” for the purposes of the Companies Acts.

- (2) An “authorised insurance company” means a person (whether incorporated or not) who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to effect or carry out contracts of insurance.
- (3) An “insurance company” means –
- (a) an authorised insurance company, or
  - (b) any other person (whether incorporated or not) who –
    - (i) carries on insurance market activity, or
    - (ii) may effect or carry out contracts of insurance under which the benefits provided by that person are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle.
- (4) Neither expression includes a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40).
- (5) References to an insurance group are to a group where the parent company is an insurance company or where –
- (a) the parent company’s principal subsidiary undertakings are wholly or mainly insurance companies, and
  - (b) the parent company does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings.
- “Group” here means a parent undertaking and its subsidiary undertakings.
- (6) For the purposes of subsection (5) –
- (a) a parent company’s principal subsidiary undertakings are the subsidiary undertakings of the company whose results or financial position would principally affect the figures shown in the group accounts, and
  - (b) the management of interests in subsidiary undertakings includes the provision of services to such undertakings.
- (7) “Insurance market activity” has the meaning given in section 316(3) of the Financial Services and Markets Act 2000.
- (8) References in this section to contracts of insurance and to the effecting or carrying out of such contracts must be read with section 22 of that Act, any relevant order under that section and Schedule 2 to that Act.

#### 1166 “Employees’ share scheme”

For the purposes of the Companies Acts an employees’ share scheme is a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of –

- (a) the bona fide employees or former employees of –
  - (i) the company,
  - (ii) any subsidiary of the company, or
  - (iii) the company’s holding company or any subsidiary of the company’s holding company, or
- (b) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees.

### **1167 Meaning of “prescribed”**

In the Companies Acts “prescribed” means prescribed (by order or by regulations) by the Secretary of State.

### **1168 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.  
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).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
  - (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 –
  - (a) to read it, and
  - (b) to retain a copy of it.
- (6) For the purposes of this section, a document or information can be read only if –
  - (a) it can be read with the naked eye, or
  - (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.

### **1169 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 386 to be entered in the company’s accounting records.
- (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;
- (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 453 (penalty for failure to file accounts), or
  - (iv) a fee to the registrar for the registration of an annual return.
- (4) Any reference in the Companies Acts to a body corporate other than a company being dormant has a corresponding meaning.

### 1170 Meaning of “EEA State” and related expressions

In the Companies Acts –

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

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

### 1171 The former Companies Acts

In the Companies Acts –

“the former Companies Acts” means –

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

“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).

### *General*

### 1172 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.



### 1173 Minor definitions: general

- (1) In the Companies Acts –
- “body corporate” and “corporation” include a body incorporated outside the United Kingdom, but do not include –
    - (a) a corporation sole, or
    - (b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;
  - “credit institution” means a credit institution as defined in Article 4.1(a) of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions;
  - “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);
  - “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;
  - “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;
  - “hire-purchase agreement” has the same meaning as in the Consumer Credit Act 1974 (c. 39);
  - “officer”, in relation to a body corporate, includes a director, manager or secretary;
  - “parent company” means a company that is a parent undertaking (see section 1162 and Schedule 7);
  - “regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000 (c. 8);
  - “regulated market” has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14));
  - “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 under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the company is registered.
- (2) In relation to an EEA State that has not implemented Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments, the following definition of “regulated market” has effect in place of that in subsection (1) –
- “regulated market” has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field.

**1174 Index of defined expressions**

Schedule 8 contains an index of provisions defining or otherwise explaining expressions used in the Companies Acts.

**PART 39**

## COMPANIES: MINOR AMENDMENTS

**1175 Removal of special provisions about accounts and audit of charitable companies**

- (1) Part 7 of the Companies Act 1985 (c. 6) and Part 8 of the Companies (Northern Ireland) Order 1986 (accounts and audit) are amended in accordance with Schedule 9 to this Act so as to remove the special provisions about companies that are charities.
- (2) In that Schedule—
  - Part 1 contains repeals and consequential amendments of provisions of the Companies Act 1985;
  - Part 2 contains repeals and consequential amendments of provisions of the Companies (Northern Ireland) Order 1986.

**1176 Power of Secretary of State to bring civil proceedings on company's behalf**

- (1) Section 438 of the Companies Act 1985 (power of Secretary of State to bring civil proceedings on company's behalf) shall cease to have effect.
- (2) In section 439 of that Act (expenses of investigating company's affairs)—
  - (a) in subsection (2) omit “, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438,”;
  - (b) omit subsections (3) and (7) (which relate to section 438);
  - (c) in subsection (8)—
    - (i) for “subsections (2) and (3)” substitute “subsection (2)”, and
    - (ii) omit “; and any such liability imposed by subsection (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subsection (3)”.
- (3) In section 453(1A) of that Act (investigation of overseas companies: provisions not applicable), omit paragraph (b) (which relates to section 438).
- (4) Nothing in this section affects proceedings brought under section 438 before the commencement of this section.

**1177 Repeal of certain provisions about company directors**

The following provisions of Part 10 of the Companies Act 1985 shall cease to have effect—

- 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).

**1178 Repeal of requirement that certain companies publish periodical statement**

The following provisions shall cease to have effect –  
section 720 of the Companies Act 1985 (c. 6) (certain companies to publish periodical statement), and  
Schedule 23 to that Act (form of statement under section 720).

**1179 Repeal of requirement that Secretary of State prepare annual report**

Section 729 of the Companies Act 1985 (annual report to Parliament by Secretary of State on matters within the Companies Acts) shall cease to have effect.

**1180 Repeal of certain provisions about company charges**

Part 4 of the Companies Act 1989 (c. 40) (registration of company charges), which has not been brought into force, is repealed.

**1181 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;
  - (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.
- (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.
- (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.

**PART 40**

COMPANY DIRECTORS: FOREIGN DISQUALIFICATION ETC

*Introductory*

**1182 Persons subject to foreign restrictions**

- (1) This section defines what is meant by references in this Part to a person being subject to foreign restrictions.
- (2) A person is subject to foreign restrictions if under the law of a country or territory outside the United Kingdom –

- (a) he is, by reason of misconduct or unfitness, disqualified to any extent from acting in connection with the affairs of a company,
  - (b) he is, by reason of misconduct or unfitness, required –
    - (i) to obtain permission from a court or other authority, or
    - (ii) to meet any other condition,
 before acting in connection with the affairs of a company, or
  - (c) he has, by reason of misconduct or unfitness, given undertakings to a court or other authority of a country or territory outside the United Kingdom –
    - (i) not to act in connection with the affairs of a company, or
    - (ii) restricting the extent to which, or the way in which, he may do so.
- (3) The references in subsection (2) to acting in connection with the affairs of a company are to doing any of the following –
- (a) being a director of a company,
  - (b) acting as receiver of a company’s property, or
  - (c) being concerned or taking part in the promotion, formation or management of a company.
- (4) In this section –
- (a) “company” means a company incorporated or formed under the law of the country or territory in question, and
  - (b) in relation to such a company –
    - “director” means the holder of an office corresponding to that of director of a UK company; and
    - “receiver” includes any corresponding officer under the law of that country or territory.

### 1183 Meaning of “the court” and “UK company”

In this Part –

“the court” means –

- (a) in England and Wales, the High Court or a county court;
- (b) in Scotland, the Court of Session or the sheriff court;
- (c) in Northern Ireland, the High Court;

“UK company” means a company registered under this Act.

### *Power to disqualify*

### 1184 Disqualification of persons subject to foreign restrictions

- (1) The Secretary of State may make provision by regulations disqualifying a person subject to foreign restrictions from –
  - (a) being a director of a UK company,
  - (b) acting as receiver of a UK company’s property, or
  - (c) in any way, whether directly or indirectly, being concerned or taking part in the promotion, formation or management of a UK company.
- (2) The regulations may provide that a person subject to foreign restrictions –
  - (a) is disqualified automatically by virtue of the regulations, or

- (b) may be disqualified by order of the court on the application of the Secretary of State.
- (3) The regulations may provide that the Secretary of State may accept an undertaking (a “disqualification undertaking”) from a person subject to foreign restrictions that he will not do anything which would be in breach of a disqualification under subsection (1).
- (4) In this Part –
  - (a) a “person disqualified under this Part” is a person –
    - (i) disqualified as mentioned in subsection (2)(a) or (b), or
    - (ii) who has given and is subject to a disqualification undertaking;
  - (b) references to a breach of a disqualification include a breach of a disqualification undertaking.
- (5) The regulations may provide for applications to the court by persons disqualified under this Part for permission to act in a way which would otherwise be in breach of the disqualification.
- (6) The regulations must provide that a person ceases to be disqualified under this Part on his ceasing to be subject to foreign restrictions.
- (7) Regulations under this section are subject to affirmative resolution procedure.

#### **1185 Disqualification regulations: supplementary**

- (1) Regulations under section 1184 may make different provision for different cases and may in particular distinguish between cases by reference to –
  - (a) the conduct on the basis of which the person became subject to foreign restrictions;
  - (b) the nature of the foreign restrictions;
  - (c) the country or territory under whose law the foreign restrictions were imposed.
- (2) Regulations under section 1184(2)(b) or (5) (provision for applications to the court) –
  - (a) must specify the grounds on which an application may be made;
  - (b) may specify factors to which the court shall have regard in determining an application.
- (3) The regulations may, in particular, require the court to have regard to the following factors –
  - (a) whether the conduct on the basis of which the person became subject to foreign restrictions would, if done in relation to a UK company, have led a court to make a disqualification order on an application under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4));
  - (b) in a case in which the conduct on the basis of which the person became subject to foreign restrictions would not be unlawful if done in relation to a UK company, the fact that the person acted unlawfully under foreign law;
  - (c) whether the person’s activities in relation to UK companies began after he became subject to foreign restrictions;

- (d) whether the person's activities (or proposed activities) in relation to UK companies are undertaken (or are proposed to be undertaken) outside the United Kingdom.
- (4) Regulations under section 1184(3) (provision as to undertakings given to the Secretary of State) may include provision allowing the Secretary of State, in determining whether to accept an undertaking, to take into account matters other than criminal convictions notwithstanding that the person may be criminally liable in respect of those matters.
- (5) Regulations under section 1184(5) (provision for application to court for permission to act) may include provision –
  - (a) entitling the Secretary of State to be represented at the hearing of the application, and
  - (b) as to the giving of evidence or the calling of witnesses by the Secretary of State at the hearing of the application.

### **1186 Offence of breach of disqualification**

- (1) Regulations under section 1184 may provide that a person disqualified under this Part who acts in breach of the disqualification commits an offence.
- (2) The regulations may provide that a person guilty of such an offence is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) 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 subsection (2)(b)(i) substitute “six months”.

#### *Power to make persons liable for company's debts*

### **1187 Personal liability for debts of company**

- (1) The Secretary of State may provide by regulations that a person who, at a time when he is subject to foreign restrictions –
  - (a) is a director of a UK company, or
  - (b) is involved in the management of a UK company,is personally responsible for all debts and other liabilities of the company incurred during that time.
- (2) A person who is personally responsible by virtue of this section for debts and other liabilities of a company is jointly and severally liable in respect of those debts and liabilities with –
  - (a) the company, and
  - (b) any other person who (whether by virtue of this section or otherwise) is so liable.

- (3) For the purposes of this section a person is involved in the management of a company if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (4) The regulations may make different provision for different cases and may in particular distinguish between cases by reference to—
  - (a) the conduct on the basis of which the person became subject to foreign restrictions;
  - (b) the nature of the foreign restrictions;
  - (c) the country or territory under whose law the foreign restrictions were imposed.
- (5) Regulations under this section are subject to affirmative resolution procedure.

*Power to require statements to be sent to the registrar of companies*

#### **1188 Statements from persons subject to foreign restrictions**

- (1) The Secretary of State may make provision by regulations requiring a person who—
  - (a) is subject to foreign restrictions, and
  - (b) is not disqualified under this Part,to send a statement to the registrar if he does anything that, if done by a person disqualified under this Part, would be in breach of the disqualification.
- (2) The statement must include such information as may be specified in the regulations relating to—
  - (a) the person's activities in relation to UK companies, and
  - (b) the foreign restrictions to which the person is subject.
- (3) The statement must be sent to the registrar within such period as may be specified in the regulations.
- (4) The regulations may make different provision for different cases and may in particular distinguish between cases by reference to—
  - (a) the conduct on the basis of which the person became subject to foreign restrictions;
  - (b) the nature of the foreign restrictions;
  - (c) the country or territory under whose law the foreign restrictions were imposed.
- (5) Regulations under this section are subject to affirmative resolution procedure.

#### **1189 Statements from persons disqualified**

- (1) The Secretary of State may make provision by regulations requiring a statement or notice sent to the registrar of companies under any of the provisions listed below that relates (wholly or partly) to a person who—
  - (a) is a person disqualified under this Part, or
  - (b) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),to be accompanied by an additional statement.

- (2) The provisions referred to above are—
  - (a) section 12 (statement of a company’s proposed officers),
  - (b) section 167(2) (notice of person having become director), and
  - (c) section 276 (notice of a person having become secretary or one of joint secretaries).
- (3) The additional statement is a statement that the person has obtained permission from a court, on an application under section 1184(5) or (as the case may be) for the purposes of section 1(1)(a) of the Company Directors Disqualification Act 1986 (c. 46) or Article 3(1) of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)), to act in the capacity in question.
- (4) Regulations under this section are subject to affirmative resolution procedure.

#### **1190 Statements: whether to be made public**

- (1) Regulations under section 1188 or 1189 (statements required to be sent to registrar) may provide that a statement sent to the registrar of companies under the regulations is to be treated as a record relating to a company for the purposes of section 1080 (the companies register).
- (2) The regulations may make provision as to the circumstances in which such a statement is to be, or may be—
  - (a) withheld from public inspection, or
  - (b) removed from the register.
- (3) The regulations may, in particular, provide that a statement is not to be withheld from public inspection or removed from the register unless the person to whom it relates provides such information, and satisfies such other conditions, as may be specified.
- (4) The regulations may provide that section 1081 (note of removal of material from the register) does not apply, or applies with such modifications as may be specified, in the case of material removed from the register under the regulations.
- (5) In this section “specified” means specified in the regulations.

#### **1191 Offences**

- (1) Regulations under section 1188 or 1189 may provide that it is an offence for a person—
  - (a) to fail to comply with a requirement under the regulations to send a statement to the registrar;
  - (b) knowingly or recklessly to send a statement under the regulations to the registrar that is misleading, false or deceptive in a material particular.
- (2) The regulations may provide that a person guilty of such an offence is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—



- (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
  - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) 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 subsection (2)(b)(i) substitute “six months”.

## PART 41

### BUSINESS NAMES

#### CHAPTER 1

##### RESTRICTED OR PROHIBITED NAMES

###### *Introductory*

### **1192 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—
  - (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;
  - (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;
  - (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*

### **1193 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—
  - (a) Her Majesty’s Government, any part of the Scottish administration or Her Majesty’s Government in Northern Ireland,
  - (b) any local authority, or

- (c) any public authority specified for the purposes of this section by regulations made by the Secretary of State.
- (2) For the purposes of this section –
  - “local authority” means –
    - (a) a local authority within the meaning of the Local Government Act 1972 (c. 70), the Common Council of the City of London or the Council of the Isles of Scilly,
    - (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.
- (3) Regulations under this section are subject to affirmative resolution procedure.
- (4) A person who contravenes this section commits an offence.
- (5) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **1194 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) 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.

#### **1195 Requirement to seek comments of government department or other relevant body**

- (1) The Secretary of State may by regulations under –
  - (a) section 1193 (name suggesting connection with government or public authority), or
  - (b) section 1194 (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.
- (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.
- (5) In this section “specified” means specified in the regulations.

#### **1196 Withdrawal of Secretary of State’s approval**

- (1) This section applies to approval given for the purposes of—  
section 1193 (name suggesting connection with government or public authority), or  
section 1194 (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 in writing given to the person concerned.
- (3) The notice must state the date as from which approval is withdrawn.

#### *Misleading names*

#### **1197 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—
  - (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—
  - (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.
- (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.
- (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.

**1198 Name giving misleading indication of activities**

- (1) A person must not carry on business in the United Kingdom under a name that gives so misleading an indication of the nature of the activities of the business as to be likely to cause harm to the public.
- (2) A person who uses a name in contravention of this section commits an offence.
- (3) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

*Supplementary*

**1199 Savings for existing lawful business names**

- (1) This section has effect in relation to—
  - sections 1192 to 1196 (sensitive words or expressions), and
  - section 1197 (inappropriate indication of company type or legal form).
- (2) Those sections do not apply to the carrying on of a business by a person who—
  - (a) carried on the business immediately before the date on which this Chapter came into force, and
  - (b) continues to carry it on under the name that immediately before that date was its lawful business name.
- (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.
- (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
  - (b) after this Chapter has come into force, the provisions of this Chapter.

## CHAPTER 2

### DISCLOSURE REQUIRED IN CASE OF INDIVIDUAL OR PARTNERSHIP

#### *Introductory*

#### **1200 Application of this Chapter**

- (1) This Chapter applies to an individual or partnership carrying on business in the United Kingdom under a business name.  
References in this Chapter to “a person to whom this Chapter applies” are to such an individual or partnership.
- (2) For the purposes of this Chapter a “business name” means a name other than –
  - (a) in the case of an individual, his surname without any addition other than a permitted addition;
  - (b) in the case of a partnership –
    - (i) the surnames of all partners who are individuals, and
    - (ii) the corporate names of all partners who are bodies corporate, without any addition other than a permitted addition.
- (3) The following are the permitted additions –
  - (a) in the case of an individual, his forename or initial;
  - (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;
  - (c) in either case, an addition merely indicating that the business is carried on in succession to a former owner of the business.

#### **1201 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;

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*

#### **1202 Disclosure required: business documents etc**

- (1) A person to whom this Chapter applies 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,
  - (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 1203 (exemption for large partnerships if certain conditions met).

- (2) A person to whom this Chapter applies 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.
- (4) Regulations under this section are subject to negative resolution procedure.

### **1203 Exemption for large partnerships if certain conditions met**

- (1) Section 1202(1) (disclosure required in business documents) does not apply in relation to a document issued by a partnership of more than 20 persons if the following conditions are met.
- (2) The conditions are that—
- (a) the partnership maintains at its principal place of business a list of the names of all the partners,
  - (b) no partner's name appears in the document, except in the text or as a signatory, and
  - (c) the document states in legible characters the address of the partnership's principal place of business and that the list of the partners' names is open to inspection there.
- (3) Where a partnership maintains a list of the partners' names for the purposes of this section, any person may inspect the list during office hours.
- (4) Where an inspection required by a person in accordance with this section is refused, an offence is committed by any member of the partnership concerned who without reasonable excuse refused the inspection or permitted it to be refused.
- (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.

### **1204 Disclosure required: business premises**

- (1) A person to whom this Chapter applies must, in any premises—
- (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.
- (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*

**1205 Criminal consequences of failure to make required disclosure**

- (1) A person who without reasonable excuse fails to comply with the requirements of—
  - section 1202 (disclosure required: business documents etc), or
  - section 1204 (disclosure required: business premises),commits an offence.
- (2) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) References in this section to the requirements of section 1202 or 1204 include the requirements of regulations under that section.

**1206 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 1202(1) or (2) (disclosure in business documents etc) or section 1204(1) (disclosure at business premises).
- (2) The proceedings shall be dismissed if the defendant (in Scotland, the defender) to the proceedings shows—
  - (a) that he has a claim against the claimant (pursuer) arising out of the contract that he has been unable to pursue by reason of the latter's breach of the requirements of this Chapter, or
  - (b) that he has suffered some financial loss in connection with the contract by reason of the claimant's (pursuer's) breach of those requirements,unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.
- (3) References in this section to the requirements of this Chapter include the requirements of regulations under this Chapter.
- (4) This section does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

**CHAPTER 3**

SUPPLEMENTARY

**1207 Application of general provisions about offences**

The provisions of sections 1121 to 1123 (liability of officer in default) and 1125 to 1131 (general provisions about offences) apply in relation to offences under this Part as in relation to offences under the Companies Acts.

**1208 Interpretation**

In this Part –

“business” includes a profession;

“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),

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 42**

## STATUTORY AUDITORS

**CHAPTER 1**

## INTRODUCTORY

**1209 Main purposes of Part**

The main purposes of this Part are –

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

**1210 Meaning of “statutory auditor” etc**

(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),
- (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,
- (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),



- (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;  
and the expressions “statutory audit” and “statutory audit work” are to be construed accordingly.
- (2) In this Part “audited person” means the person in respect of whom a statutory audit is conducted.
- (3) In subsection (1) –
- “bank” means a person who –
    - (a) is a credit institution within the meaning given by Article 4.1(a) of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions, and
    - (b) is a company or a firm as defined in Article 48 of the Treaty establishing the European Community;
  - “friendly society” means a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40);
  - “industrial and provident society” means –
    - (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;
  - “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;
  - “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.

### **1211 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).

**CHAPTER 2**

## INDIVIDUALS AND FIRMS

*Eligibility for appointment***1212 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 –
  - (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 1222 applies (individuals retaining only 1967 Act authorisation) a person's eligibility for appointment as a statutory auditor is restricted as mentioned in that section.

**1213 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 –
  - (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 –
  - (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 –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) A person is guilty of an offence if –
  - (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 –
  - (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;

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

#### *Independence requirement*

### **1214 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 –
  - (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 –
  - (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 –
  - (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).
- (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.
- (7) Regulations under subsection (4) are subject to negative resolution procedure.

### **1215 Effect of lack of independence**

- (1) If at any time during his term of office a statutory auditor becomes prohibited from acting by section 1214(1), he must immediately –
  - (a) resign his office (with immediate effect), and
  - (b) give notice in writing to the audited person that he has resigned by reason of his lack of independence.
- (2) A person is guilty of an offence if –
  - (a) he acts as a statutory auditor in contravention of section 1214(1), or

- (b) he fails to give the notice mentioned in paragraph (b) of subsection (1) in accordance with that subsection.
- (3) A person guilty of an offence under subsection (2) is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (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 1214(1) after the conviction.
- (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).
- (6) A person guilty of an offence under subsection (4) or (5) is liable—
  - (a) on conviction on indictment, to a fine;
  - (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.
- (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 1214(1).

*Effect of appointment of a partnership*

**1216 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,is by virtue of this Chapter appointed as statutory auditor of an audited person.
- (2) Unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners.
- (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
  - (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—
  - (a) the business of the former partnership, or
  - (b) such part of it as is agreed by the audited person is to be treated as comprising the appointment.
- (6) For the purposes of this section, a partnership or other person is “appropriate” if it or he—
  - (a) is eligible for appointment as a statutory auditor by virtue of this Chapter, and
  - (b) is not prohibited by section 1214(1) from acting as statutory auditor of the audited person.

### *Supervisory bodies*

#### **1217 Supervisory bodies**

- (1) In this Part a “supervisory body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which maintains and enforces rules as to—
  - (a) the eligibility of persons for appointment as a statutory auditor, and
  - (b) the conduct of statutory audit work,which are binding on persons seeking appointment or acting as a statutory auditor either because they are members of that body or because they are otherwise subject to its control.
- (2) In this Part references to the members of a supervisory body are to the persons who, whether or not members of the body, are subject to its rules in seeking appointment or acting as a statutory auditor.
- (3) In this Part references to the rules of a supervisory body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part.  
This includes rules relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.
- (4) Schedule 10 has effect with respect to the recognition of supervisory bodies for the purposes of this Part.

#### **1218 Exemption from liability for damages**

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

- (2) The persons within this subsection are –
- (a) any recognised supervisory body,
  - (b) any officer or employee of a recognised supervisory body, and
  - (c) any member of the governing body of a recognised supervisory body.
- (3) Subsection (1) applies to the functions of a recognised supervisory body so far as relating to, or to matters arising out of, any of the following –
- (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;
  - (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 –
- (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 –
- (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).

### *Professional qualifications*

#### **1219 Appropriate qualifications**

- (1) A person holds an appropriate qualification for the purposes of this Chapter if and only if –
- (a) he holds a recognised professional qualification obtained in the United Kingdom,
  - (b) immediately before the commencement of this Chapter, he –
    - (i) held an appropriate qualification for the purposes of Part 2 of the Companies Act 1989 (c. 40) (eligibility for appointment as company auditor) by virtue of section 31(1)(a) or (c) of that Act, or
    - (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,
  - (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
  - (f) subject to any direction under section 1221(5), he is regarded for the purposes of this Chapter as holding an approved overseas qualification.
- (2) A person is within this subsection if –
- (a) before 1st January 1990, he began a course of study or practical training leading to a professional qualification in accountancy offered by a body established in the United Kingdom,
  - (b) he obtained that qualification on or after 1st January 1990 and before 1st January 1996, and
  - (c) the Secretary of State approves his qualification as an appropriate qualification for the purposes of this Chapter.
- (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).

### **1220 Qualifying bodies and recognised professional qualifications**

- (1) In this Part a “qualifying body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which offers a professional qualification in accountancy.
- (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.  
This includes, so far as so relevant, rules relating to –
- (a) admission to or expulsion from a course of study leading to a qualification,
  - (b) the award or deprivation of a qualification, or
  - (c) the approval of a person for the purposes of giving practical training or the withdrawal of such approval.
- (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.

### **1221 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
  - (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),affords 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
  - (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.
- (6) The Secretary of State may give different directions in relation to different approved overseas qualifications.
- (7) The Secretary of State may, if he thinks fit, having regard to the considerations mentioned in subsections (3) and (4), withdraw a declaration under subsection (1) in relation to—
  - (a) persons becoming qualified to audit accounts under the law of the specified foreign country after such date as he may specify, or
  - (b) persons obtaining the specified professional qualification after such date as he may specify.
- (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.
- (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.

#### **1222 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.



- (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 385(2).
- (3) References to a person eligible for appointment as a statutory auditor by virtue of this Part in enactments relating to eligibility for appointment as auditor of a person other than a company do not include a person to whom this section applies.

### *Information*

#### **1223 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;
  - (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.
- (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.

#### **1224 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 –
  - (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.

### *Enforcement*

#### **1225 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,

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

### CHAPTER 3

#### AUDITORS GENERAL

##### *Eligibility for appointment*

#### **1226 Auditors General: eligibility for appointment as a statutory auditor**

- (1) In this Part “Auditor General” means—
  - (a) the Comptroller and Auditor General,
  - (b) the Auditor General for Scotland,
  - (c) the Auditor General for Wales, or
  - (d) the Comptroller and Auditor General for Northern Ireland.
- (2) An Auditor General is eligible for appointment as a statutory auditor.
- (3) Subsection (2) is subject to any suspension notice having effect under section 1234 (notices suspending eligibility for appointment as a statutory auditor).

##### *Conduct of audits*

#### **1227 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.

##### *The Independent Supervisor*

#### **1228 Appointment of the Independent Supervisor**

- (1) The Secretary of State must appoint a body (“the Independent Supervisor”) to discharge the function mentioned in section 1229(1) (“the supervision function”).
- (2) An appointment under this section must be made by order.

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

*Supervision of Auditors General*

**1229 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.
- (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;
  - (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;
  - (c) monitors the performance of statutory audits carried out by an Auditor General;
  - (d) investigates any matter arising from the performance by an Auditor General of a statutory audit;
  - (e) holds disciplinary hearings in respect of an Auditor General which appear to be desirable following the conclusion of such investigations;
  - (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) 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.
- (7) Any fine received by the Independent Supervisor under supervision arrangements is to be paid into the Consolidated Fund.

### **1230 Duties of Auditors General in relation to supervision arrangements**

- (1) Each Auditor General must –
  - (a) comply with any standards of the kind mentioned in subsection (3)(a) or (b) of section 1229 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
  - (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.
- (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);
  - (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 1229.

#### *Reporting requirement*

### **1231 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.
- (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).
- (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 1228, this section applies with such modifications as may be specified in the order.

### *Information*

#### **1232 Matters to be notified to the Independent Supervisor**

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

#### **1233 The Independent Supervisor’s power to call for information**

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

### *Enforcement*

#### **1234 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;
  - (b) a notice amending or revoking a suspension notice previously issued to an Auditor General.
- (2) In determining whether it is appropriate to issue a notice under subsection (1), the Independent Supervisor must have regard to –
  - (a) the Auditor General’s performance of the obligations imposed on him by or by virtue of this Part, and

- (b) the Auditor General’s performance of his functions as a statutory auditor.
- (3) A notice under subsection (1) must—
  - (a) be in writing, and
  - (b) state the date on which it takes effect (which must be after the period of three months beginning with the date on which it is issued).
- (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.
- (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).
- (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.
- (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.
- (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.
- (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.

### **1235 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 –
  - (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 1213 (effect of ineligibility: criminal offences).

### **1236 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.
- (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.
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

### *Proceedings*

### **1237 Proceedings involving the Independent Supervisor**

- (1) If the Independent Supervisor is an unincorporated association, any relevant proceedings may be brought by or against it in the name of any body corporate whose constitution provides for the establishment of the body.
- (2) For this purpose “relevant proceedings” means proceedings brought in or in connection with the exercise of any function by the body as the Independent Supervisor.
- (3) Where an appointment under section 1228 is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.

### *Grants*

### **1238 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 42 of the Companies Act 2006;”.

## CHAPTER 4

### THE REGISTER OF AUDITORS ETC

#### **1239 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
  - (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,
  - (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,
  - (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),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;
  - (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;
  - (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.
- (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 1252 (delegation of Secretary of State's functions),
  - (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 1252, with respect to the keeping of the register, or



- (f) the Independent Supervisor appointed under section 1228.
- (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;
  - (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.
- (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.
- (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.
- (10) Regulations under this section are subject to negative resolution procedure.

#### **1240 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 –
  - (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
  - (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.
- (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*

#### **1241 Meaning of “third country auditor”, “registered third country auditor” etc**

- (1) In this Part –
  - “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 1239(1).
- (2) In subsection (1) “traded non-Community company” means a body corporate –
  - (a) which is incorporated or formed under the law of a country or territory which is not a member State or part of a member State,
  - (b) whose transferable securities are admitted to trading on a regulated market situated or operating in the United Kingdom, and
  - (c) which has not been excluded, or is not of a description of bodies corporate which has been excluded, from this definition by an order made by the Secretary of State.
- (3) For this purpose –
  - “regulated market” has the meaning given by Article 4.1(14) of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments;
  - “transferable securities” has the meaning given by Article 4.1(18) of that Directive.
- (4) An order under this section is subject to negative resolution procedure.

#### *Duties*

#### **1242 Duties of registered third country auditors**

- (1) A registered third country auditor must participate in –
  - (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).
- (2) A registered third country auditor must –
  - (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.

### *Information*

#### **1243 Matters to be notified to the Secretary of State**

- (1) The Secretary of State may require a registered third country auditor –
  - (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.
- (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.

#### **1244 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.
- (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*

#### **1245 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.
- (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.

#### **1246 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 1239(1) power to remove a third country auditor from the register.
- (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.
- (3) Where provision is made under section 1239(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.

#### **1247 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 1238) insert –

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

### **CHAPTER 6**

#### SUPPLEMENTARY AND GENERAL

##### *Power to require second company audit*

#### **1248 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 –
- (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 –
- (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 1214(1) (independence requirement) from acting as statutory auditor of the company.