

## SCHEDULE 1

Article 6

### TRANSITIONAL ADAPTATIONS OF PROVISIONS BROUGHT INTO FORCE

#### **A company's constitution (s.17)**

- 1.—(1) Section 17 (a company's constitution) has effect with the following adaptation.
- (2) Make the existing provision subsection (1).
- (3) After that subsection insert—
  - “(2) Unless the context otherwise requires, references in this Act to a company's articles (including the reference in subsection (1) above) include the company's memorandum.”.

#### **Inspection of register of members (s.116)**

- 2.—(1) Section 116 (rights to inspect and require copies of register and index of members' names) has effect with the following adaptation.
- (2) After subsection (1) (right of inspection) insert—
  - “(1A) The right conferred by subsection (1) is not exercisable when the register is closed under section 358 of the Companies Act 1985 or Article 366 of the Companies (Northern Ireland) Order 1986.”.

#### **Exercise of members' rights (ss.145 to 153)**

- 3.—(1) Section 145 (effect of provision of articles as to enjoyment or exercise of members' rights) has effect with the following adaptation.
  - (2) In subsection (3)(h), for “section 423 (right to be sent a copy of annual accounts and reports)” substitute “section 238 of the Companies Act 1985 or Article 246 of the Companies (Northern Ireland) Order 1986 (persons entitled to receive copies of accounts and reports).”.
- 4.—(1) Section 146 (traded companies: nomination of persons to enjoy information rights) has effect with the following adaptations.
  - (2) In subsection (3)(b)(i), for “section 431 or 432 (right to require copies of accounts and reports),” substitute “section 239 of the Companies Act 1985 or Article 247 of the Companies (Northern Ireland) Order 1986 (right to demand copies of accounts and annual reports).”.
  - (3) For the second sentence of subsection (4) substitute “Section 251 of the Companies Act 1985 or Article 259 of the Companies (Northern Ireland) Order 1986 (summary financial statements) applies to copies of accounts and reports required to be sent out by virtue of this section to a person nominated to enjoy information rights as it applies to copies of accounts and reports required to be sent out to a member of the company in accordance with section 238 of that Act or Article 246 of that Order.”.
- 5.—(1) Section 153(1) (exercise of rights held on behalf of others: members' requests) has effect with the following adaptation.
  - (2) Omit paragraph (d).

#### **General duties of directors (ss.170 to 181)**

- 6.—(1) Section 170 (scope and nature of general duties) has effect with the following adaptations.
  - (2) In subsection (1), for “177” substitute “174”.
  - (3) Omit subsection (2).

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(4) In subsection (3) after “The general duties” insert “in sections 171 to 174”.

7.—(1) Section 178 (civil consequences of breach of general duties) has effect with the following adaptation.

(2) In subsection (1), for “177” substitute “174”.

8.—(1) Section 180 (consent, approval or authorisation by members) has effect with the following adaptations.

(2) Omit subsection (1).

(3) In subsection (2), omit the words from “, except that” to the end.

(4) In subsection (4), omit paragraph (b).

9.—(1) Section 181 (modification of provisions in relation to charitable companies) has effect with the following modifications.

(2) Omit subsections (2) and (3).

#### **Transactions with directors requiring approval of members (ss.188 to 226)**

10.—(1) Section 191 (meaning of “substantial” non-cash asset) has effect with the following adaptations.

(2) In subsection (4)—

(a) for “Part 15” substitute “Part 7 of the Companies Act 1985 or Part 8 of the Companies (Northern Ireland) Order 1986”, and

(b) for “section 424” substitute “section 238A of that Act or Article 246A of that Order”.

11.—(1) Section 205 (exception for expenditure on defending proceedings etc) has effect with the following adaptation.

(2) In subsection (5), for the words from “section 661(3)” to the end substitute—

“section 144(3) or (4) of the Companies Act 1985 or Article 154(3) or (4) of the Companies (Northern Ireland) Order 1986 (acquisition of shares by innocent nominee), or

section 727 of the Companies Act 1985 or Article 675 of the Companies (Northern Ireland) Order 1986 (general power to grant relief in case of honest and reasonable conduct).”.

#### **Directors’ liabilities (ss.232 to 239)**

12.—(1) Section 234 (qualifying third party indemnity provision) has effect with the following adaptation.

(2) In subsection (6), for the words from “section 661(3)” to the end substitute—

“section 144(3) or (4) of the Companies Act 1985 or Article 154(3) or (4) of the Companies (Northern Ireland) Order 1986 (acquisition of shares by innocent nominee), or

section 727 of the Companies Act 1985 or Article 675 of the Companies (Northern Ireland) Order 1986 (general power to grant relief in case of honest and reasonable conduct).”.

#### **Written resolutions (ss.288 to 300)**

13.—(1) Section 288 (written resolutions of private companies) has effect with the following adaptations.

(2) In subsection (2) (resolutions that may not be passed as a written resolution)—

- (a) in paragraph (b), for “a resolution under section 510” substitute “a resolution under section 391 of the Companies Act 1985 or Article 399 of the Companies (Northern Ireland) Order 1986”;
- (b) after that paragraph add—
  - “(c) a resolution under section 80A of the Companies Act 1985 or Article 90A of the Companies (Northern Ireland) Order 1986 revoking, varying or renewing the authority of the directors to allot securities.”.
- (3) After subsection (5) add—
  - “(6) A written resolution under any of the provisions of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 mentioned in sections 300A to 300D is not effective unless the procedural requirements specified in those sections are complied with.”.
- (4) After section 300 insert—

*“Transitional application of procedural requirements*

**Disapplication of pre-emption rights**

**300A.**—(1) This section applies to a written resolution—

- (a) under section 95(2) of the Companies Act 1985 or Article 105(2) of the Companies (Northern Ireland) Order 1986 (disapplication of pre-emption rights), or
- (b) renewing a resolution under that provision.

(2) The statement required by section 95(5) of that Act or Article 105(5) of that Order (statement by directors to be circulated with notice of meeting) must be sent or submitted to every eligible member at or before the time at which the resolution is sent or submitted to him.

(3) Section 95(6) of that Act or Article 105(6) of that Order (offences) applies in relation to the inclusion in any such statement of matter that is misleading, false or deceptive in a material particular.

**Financial assistance for purchase of company’s own shares or those of holding company**

**300B.**—(1) This section applies to a written resolution under section 155(4) or (5) of the Companies Act 1985 or Article 165(4) or (5) of the Companies (Northern Ireland) Order 1986 (financial assistance for purchase of company’s own shares or those of holding company).

(2) The documents referred to in section 157(4)(a) of that Act or Article 167(4)(a) of that Order (documents to be available at meeting) must be sent or submitted to every eligible member at or before the time at which the resolution is sent or submitted to him.

**Authority for off-market purchase or contingent purchase contract of company’s own shares**

**300C.**—(1) This section applies to a written resolution—

- (a) conferring authority to make an off-market purchase of the company’s own shares under section 164(2) of the Companies Act 1985 or Article 174(2) of the Companies (Northern Ireland) Order 1986,
- (b) conferring authority to vary a contract for an off-market purchase of the company’s own shares under section 164(7) of that Act or Article 174(7) of that Order, or

(c) varying, revoking or renewing any such authority under section 164(3) of that Act or Article 174(3) of that Order.

(2) Section 164(5) of that Act or Article 174(5) of that Order (resolution ineffective if passed by exercise of voting rights by member holding shares to which the resolution relates) does not apply.

But for the purposes of section 289 of this Act (eligible members) a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to vote on the resolution.

(3) The documents referred to in section 164(6) of that Act or Article 174(6) of that Order (documents to be available at company's registered office and at meeting), and, where that provision applies by virtue of section 164(7) of that Act or Article 174(7) of that Order, the further documents referred to in that provision, must be sent or submitted to every eligible member at or before the time at which the resolution is sent or submitted to him.

(4) Subsections (2) and (3) above also have effect in relation to a written resolution in relation to which the provisions of section 164(3) to (7) of the Companies Act 1985 or Article 174(3) to (7) of the Companies (Northern Ireland) Order 1986 apply by virtue of—

- (a) section 165(2) of that Act or Article 175(2) of that Order (authority for contingent purchase contract), or
- (b) section 167(2) of that Act or Article 177(2) of that Order (approval for release of rights under contracts approved under section 164 or 165 or Article 174 or 175).

#### **Approval for payment out of capital**

**300D.**—(1) This section applies to a written resolution giving approval under section 173(2) of the Companies Act 1985 or Article 183(2) of the Companies (Northern Ireland) Order 1986 (redemption or purchase of company's own shares out of capital).

(2) Section 174(2) of that Act or Article 184(2) of that Order (resolution ineffective if passed by exercise of voting rights by member holding shares to which the resolution relates) does not apply.

But for the purposes of section 289 of this Act (eligible members) a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to vote on the resolution.

(3) The documents referred to in section 174(4) of that Act or Article 184(4) of that Order (documents to be available at meeting) must be sent or submitted to every eligible member at or before the time at which the resolution is sent or submitted to him.”.

#### **Resolutions at meetings (ss.301 to 335)**

**14.**—(1) Section 306 (power of court to order meeting) has effect with the following adaptation.

(2) In subsection (1)(b) for “or this Act” substitute “this Act, the Companies Act 1985 or the Companies (Northern Ireland) Order 1986”.

#### **Public companies: additional requirements for AGMs (ss.336 to 340)**

**15.**—(1) Section 336 (public companies: annual general meeting) has effect with the following adaptations.

(2) In subsection (1), for “6 months” substitute “7 months”.

(3) In subsection (2), for “notice under section 392 (alteration of accounting reference date)” substitute “notice under section 225 of the Companies Act 1985 or Article 233 of the Companies (Northern Ireland) Order 1986 (alteration of accounting reference date)”.

#### **Contents of directors’ report: business review (s.417)**

**16.**—(1) Section 417 (contents of directors’ report: business review) has effect with the following adaptations.

(2) For subsection (1) substitute—

“(1) Unless the company is entitled to small companies exemption in relation to the directors’ report, the report must contain a business review.

(1A) A company is entitled to small companies exemption in relation to the directors’ report for a financial year if it—

- (a) qualifies as small in relation to that year under Part 7 of the Companies Act 1985 or Part 8 of the Companies (Northern Ireland) Order 1986, and
- (b) is not, and was not at any time within that year, an ineligible company as defined in section 247A(1B) of that Act or Article 255A(1B) of that Order.”.

(3) For subsection (7) substitute—

“(7) Where a company—

- (a) qualifies as medium-sized in relation to a financial year under Part 7 of the Companies Act 1985 or Part 8 of the Companies (Northern Ireland) Order 1986, and
- (b) is not, and was not at any time within that year, an ineligible company as defined in section 247A(1B) of that Act or Article 255A(1B) of that Order,

the directors’ report for the year need not comply with the requirements of subsection (6) so far as they relate to non-financial information.”.

#### **Appointment of auditors of private company (ss.485 to 488)**

**17.**—(1) Section 485 (appointment of auditors of private companies: general) has effect with the following adaptations.

(2) For paragraph (a) of subsection (2) substitute—

“(a) the end of the period allowed for delivering accounts and reports under section 244 of the Companies Act 1985 or Article 252 of the Companies (Northern Ireland) Order 1986, or”.

(3) In paragraph (b) of subsection (2), for “section 423” substitute “section 238 of the Companies Act 1985 or Article 246 of the Companies (Northern Ireland) Order 1986”.

**18.**—(1) Section 487 (term of office of auditors of private company) has effect with the following adaptation.

(2) In subsection (3) for “the provisions of this Part” substitute “the provisions of Chapter 5 of Part 11 of the Companies Act 1985 or Chapter 5 of Part 12 of the Companies (Northern Ireland) Order 1986”.

#### **Protection of members against unfair prejudice (ss.994 to 999)**

**19.**—(1) Section 994(3) (meaning of “company”) has effect with the following adaptation.

(2) For paragraph (a) substitute—

“(a) a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986;”.

### **Company investigations: amendments relating to offences (s.1124 and Sch.3)**

**20.**—(1) Schedule 3 (amendments of remaining provisions of the 1985 Act relating to offences) has effect with the following adaptations.

(2) Omit the words “or Northern Ireland” in the following provisions inserted in the 1985 Act—

- (a) in the provision inserted by paragraph 1(2) as section 444(4)(b)(ii);
- (b) in the provision inserted by paragraph 3(3) as section 449(6A)(b)(ii);
- (c) in the provision inserted by paragraph 4(1) as section 450(3)(b)(ii);
- (d) in the provision inserted by paragraph 5(1) as section 451(2)(b)(ii).

### **Meaning of “UK-registered company” (s.1158)**

**21.**—(1) Section 1158 (meaning of “UK-registered company”) has effect with the following adaptations.

(2) For “a company registered under this Act” substitute “a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 or a company registered under section 680 of that Act or Article 629 of that Order.”.

(3) For “an overseas company that has registered particulars under section 1046” substitute “an overseas company within the meaning of that Act or a Part 23 company within the meaning of that Order”.

## SCHEDULE 2

Article 8

### REPEALS

## PART 1

### GREAT BRITAIN

<i>Short title and chapter</i>	<i>Extent of repeal brought into force</i>
Companies Act 1985 (c.6)	Section 125(6). Section 234(1)(a). Section 234ZZB. Section 241, as it applies to private companies. In section 246(4)(a), the words “and 234ZZB (directors’ report: business review)”. Section 246A(2A). Sections 252 and 253. Section 282. Section 285.

<i>Short title and chapter</i>	<i>Extent of repeal brought into force</i>
	Section 292.
	Sections 303 and 304.
	Sections 309 to 309C.
	Sections 312 to 316.
	Sections 318 to 322.
	Section 322B.
	Sections 330 to 347.
	Sections 347A to 347K.
	Section 356.
	In section 357—
	(a) the words “section 356 (inspection)”; and
	(b) the words from “and the power of the court” to the end.
	Sections 366 to 379.
	Section 379A(1)(b) to (e).
	Section 380(1) and (4) to (5).
	Sections 381 to 383.
	Sections 384 and 385, as they apply to private companies.
	Sections 385A and 386.
	Sections 387 to 388A, as they apply to private companies.
	Section 393.
	In section 437—
	(a) in subsection (1), the second sentence; and
	(b) subsections (1B) and (1C).
	Section 442(2).
	Section 446.
	In section 448(7), the words from “and liable to a fine.” to the end.
	Section 449(7).
	Section 450(4).
	Section 451(3).
	Section 453(1A)(d) and the word “and” preceding it.

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<i>Short title and chapter</i>	<i>Extent of repeal brought into force</i>
	Section 453A(6).
	Sections 458 to 461.
	Section 719.
	Section 730(5).
	Section 734(1).
	Section 741.
	Part 1 of Schedule 13.
	Schedule 15A.
	In Schedule 24, the entries relating to—
	(a) sections 210(3), 211(10), 214(5), 215(8), 216(3), 217(7), 218(3) and 219(3),
	(b) section 241(2), as it applies to private companies,
	(c) sections 314(3), 318(8), 322B(4), 323(2), 324(7), 326(2), (3), (4) and (5), 328(6), 329(3), 342(1), (2) and (3), 343(8), 356(5), 366(4), 367(3) and (5), 372(4) and (6), 376(7), 380(5), 381B(2), 382(5), 382B(2) and 383(4),
	(d) section 387(2), as it applies to private companies, and
	(e) sections 429(6), 430A(6), 444(3), 448(7), 449(6), 450, 451, 453A(5), 455(1) and (2), 458, 461(5) and 720(4).
Insolvency Act 1986 (c.45)	In Schedule 13, in Part 1, the entries relating to the following provisions of the Companies Act 1985—
	(a) section 380(4), and
	(b) section 461(6).
Water Act 1989 (c.15)	In Schedule 25, paragraph 71(3).
Companies Act 1989 (c.40)	Section 16.
	Section 113.
	Section 114(1).
	Section 115(2) and (3).
	Section 138.



<i>Short title and chapter</i>	<i>Extent of repeal brought into force</i>
	Section 143(8) and (9).
	In Schedule 10, paragraph 10.
	In Schedule 18, paragraphs 34 to 36.
	In Schedule 19, paragraphs 8, 9, and 17.
Political Parties, Elections and Referendums Act 2000 (c.41)	Section 139(1).
	Schedule 19.
	In Schedule 23, paragraph 12.
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27)	Section 19(1).
	Section 20.
	In Schedule 2, paragraphs 7 to 9, 22 and 23.
Civil Partnership Act 2004 (c.33)	In Schedule 27, paragraph 102.

## PART 2

### NORTHERN IRELAND

<i>Short title and chapter</i>	<i>Extent of repeal brought into force</i>
Companies (Northern Ireland) Order 1986 (N.I. 6)	Article 9.
	Article 135(6).
	In Article 242(1) the words from “and containing the business review” to the end.
	Article 242ZZB.
	Article 249, as it applies to private companies.
	In Article 254(4)(a), the words “and 242ZZB (directors’ report: business review)”.
	Article 254A(2A).
	Articles 260 and 261.
	Article 290.
	Article 293.
	Article 300.
	Articles 311 and 312.
	Article 317.
	Article 318, as it applies to directors.
	Articles 320 to 324.

<i>Short title and chapter</i>	<i>Extent of repeal brought into force</i>
	Articles 326 to 330.
	Article 330B.
	Articles 338 to 355.
	Article 364.
	In Article 365—
	(a) the words “Article 364 (inspection)”; and
	(b) the words from “and the power of the court” to the end.
	Articles 374 to 387.
	Article 387A(1)(b) to (e).
	Article 388(1) and (4) to (5).
	Articles 389 to 391.
	Articles 392 and 393, as they apply to private companies.
	Articles 393A and 394.
	Articles 395 to 396A, as they apply to private companies.
	Article 401.
	Articles 451 to 454.
	Article 668.
	Part 1 of Schedule 13.
	Schedule 15A.
	In Schedule 23, the entries relating to—
	(a) Articles 218(3), 219(10), 222(5), 223(8), 224(3), 225(7), 226(3), 227(3),
	(b) Article 249(2), as it applies to private companies,
	(c) Articles 322(3), 326(8), 330B(4), 331(2), 332(7), 334(2), (3), (4) and (5), 336(6), 337(3), 350(1), (2) and (3), 351(8), 364(5), 374(4), 375(3) and (5), 380(4) and (6), 384(7), 388(5), 389B(2), 390(5), 390B(2) and 391(4),
	(d) Article 395(2), as it applies to private companies, and
	(e) Articles 422(6), 423A(6), 451, 454(5) and 669(4).

<i>Short title and chapter</i>	<i>Extent of repeal brought into force</i>
Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))	Article 18.
Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))	Article 48. Article 49(1). Article 50(2) and (3). Article 73. In Schedule 3, paragraphs 14 to 16. In Schedule 5, paragraph 11.
Companies (Audit, Investigations and Community Enterprises) (Northern Ireland) Order 2005 (S.I. 2005/1967 (N.I. 17))	Article 19.

### SCHEDULE 3

Article 9

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### **Resolutions and agreements affecting a company's constitution (ss.29 and 30)**

1.—(1) Sections 29 and 30 of the Companies Act 2006 (resolutions and agreements affecting a company's constitution) apply to resolutions passed and agreements made on or after 1st October 2007.

(2) The provisions of section 380(1) and (5) of the 1985 Act or Article 388(1) and (5) of the 1986 Order continue to apply in relation to resolutions passed and agreements made, but not forwarded to the registrar, before that date.

This does not affect the operation of section 1297 of the Companies Act 2006 (continuity of the law) in relation to things done under those provisions.

##### **Inspection of register of members (ss.116 to 119)**

2.—(1) Sections 116 to 119 of the Companies Act 2006 (inspection of register of members) apply where—

- (a) the request is made on or after 1st October 2007, and
- (b) the company is not obliged to deliver an annual return under section 363 of the 1985 Act or Article 371 of the 1986 Order made up to a date before 1st October 2008.

(2) Sections 356 and 357 of the 1985 Act or Articles 364 and 365 of the 1986 Order continue to apply to requests made before 1st October 2007 or after that date to a company that is so obliged.

##### **Exercise of members' rights (ss.145 to 153)**

3.—(1) Section 145 of the Companies Act 2006 (effect of provisions of articles as to enjoyment or exercise of members' rights) applies in relation to things required or authorised to be done as mentioned in subsection (2) of that section on or after 1st October 2007.

(2) Nominations under section 146 of that Act (traded companies: nomination of persons to enjoy information rights) may be made at any time on or after 1st October 2007.

A company is not required to act on a nomination before 1st January 2008; but if it does so, sections 147 to 150 apply.

(3) Section 152 of that Act (exercise of rights where shares held on behalf of others: exercise in different ways) applies in relation to the exercise of rights on or after 1st October 2007.

(4) A request may be made under section 153 of that Act (exercise of rights where shares held on behalf of others: members' requests) at any time on or after 1st October 2007.

#### **Validity of acts of directors (s.161)**

4.—(1) Section 161 of the Companies Act 2006 (validity of acts of directors) applies to acts done on or after 1st October 2007.

(2) Section 285 of the 1985 Act (validity of acts of director or manager) or Article 293 of the 1986 Order (validity of acts of director) continues to apply to acts done before that date.

#### **Removal of directors (ss.168 and 169)**

5.—(1) Section 169(5) of the Companies Act 2006 (circumstances in which representations need not be sent out or read out at the meeting) applies where the representations are received by the company on or after 1st October 2007.

(2) Section 304(4) of the 1985 Act or Article 312(4) of the 1986 Order continues to apply where the representations are received by the company before that date.

#### **Transactions requiring members' approval: directors' long-term service contracts (ss.188 and 189)**

6.—(1) Sections 188 and 189 of the Companies Act 2006 (directors' long-term service contracts: requirement of members' approval) apply to agreements made on or after 1st October 2007.

(2) A resolution passed before that date approving the provision made by such an agreement is effective for the purposes of those sections if it complies with the requirements of those sections.

(3) Section 188(4) (addition of unexpired period of earlier contract in determining guaranteed period under new contract) applies whether the original contract (within the meaning of that provision) was entered into before or after that date.

(4) Section 319 of the 1985 Act or Article 327 of the 1986 Order continues to apply to agreements made before that date.

#### **Transactions requiring members' approval: substantial property transactions (ss.190 to 196)**

7.—(1) Sections 190 to 196 of the Companies Act 2006 (substantial property transactions: requirement of members' approval) apply to arrangements or transactions entered into on or after 1st October 2007.

(2) A resolution passed before that date approving an arrangement or transaction is effective for the purposes of those sections if it complies with the requirements of those sections.

(3) Sections 320 to 322 of the 1985 Act or Articles 328 to 330 of the 1986 Order continue to apply in relation to arrangements or transactions entered into before that date.

#### **Transactions requiring members' approval: loans, quasi-loans and credit transactions (ss.197 to 214)**

8.—(1) Sections 197 to 214 of the Companies Act 2006 (loans, quasi-loans and credit transactions: requirement of members' approval) apply to transactions or arrangements entered into on or after 1st October 2007.

(2) A resolution passed before that date approving a transaction or arrangement is effective for the purposes of those sections if it complies with the requirements of those sections.

(3) Sections 330 to 342 of the 1985 Act or Articles 338 to 350 of the 1986 Order continue to apply in relation to a contravention occurring before that date.

**9.** Approval is not required under section 197, 198, 200 or 201 of the Companies Act 2006 (requirement of members' approval for loans etc) for anything done by a company in pursuance of an agreement entered into before 1st October 2007 that, by virtue of section 337A of the 1985 Act or Article 345A of the 1986 Order (funding of director's expenditure on defending proceedings), would not have required approval if done before that date.

**10.—**(1) This paragraph applies where before 1st October 2007 a company has done anything—

- (a) pursuant to section 337(1) or (2) of the 1985 Act or Article 345(1) or (2) of the 1986 Order (funding of director's expenditure on duty to company), and
- (b) on the condition mentioned in section 337(3)(b) of that Act or Article 345(3)(b) of that Order (condition requiring repayment of loan etc if approval of company in general meeting not given within six months).

(2) If that condition has not been satisfied before that date, it continues to apply notwithstanding the repeal of that section or that Article, but subject as follows.

(3) In the case of a private company that by reason of the repeal of section 366 of the 1985 Act or Article 374 of the 1986 Order with effect from that date ceases to be required to hold an annual general meeting, the condition shall be read as if it provided—

- (a) that the approval of the company is required on or before the last date on which the company would have been required to hold an annual general meeting but for the repeal, and
- (b) that the loan is to be repaid within six months from that date if such approval is not forthcoming.

**11.—**(1) This paragraph applies where before 1st October 2007 a company has done anything—

- (a) pursuant to section 337A(1) or (3) of the 1985 Act or Article 345A(1) or (3) of the 1986 Order (funding of director's expenditure on defending proceedings), and
- (b) on the terms mentioned in section 337A(4) of that Act or Article 345A(4) of that Order (terms requiring repayment of loan etc if defendant convicted, has judgment given against him or refused relief).

(2) If immediately before that date—

- (a) it is not yet known whether repayment will be required, or
- (b) repayment is required but had not been made,

those terms continue to apply notwithstanding the repeal of that section or that Article.

### **Transactions requiring members' approval: payments for loss of office (ss.215 to 222)**

**12.—**(1) Sections 215 to 222 of the Companies Act 2006 (payments for loss of office: requirement of members' approval) apply in relation to any such loss of office or employment as is mentioned in section 215(1)(a) or (b), or any such retirement as is mentioned in section 215(1)(c) or (d), occurring on or after 1st October 2007.

(2) A resolution passed before that date approving a payment is effective for the purposes of those sections if it complies with the requirements of those sections.

(3) Sections 312 to 316 of the 1985 Act or Articles 320 to 324 of the 1986 Order continue to apply in relation to loss of office or retirement within the meaning of those provisions occurring before that date.

- (4) For the purposes of this paragraph loss of office or retirement is regarded as occurring—
- (a) in the case of a directorship, when the person ceases to be a director;
  - (b) in the case of any other office, when the person ceases to hold that office;
  - (c) in the case of employment, when the employment comes to an end.

#### **Directors' service contracts (ss.227 to 230)**

**13.**—(1) Sections 228 to 230 of the Companies Act 2006 (directors' service contracts) apply to—

- (a) contracts within section 227(1) of that Act entered into on or after 1st October 2007,
- (b) appointments within section 227(2) of that Act made on or after that date, and
- (c) contracts to which section 318(1) of the 1985 Act or Article 326(1) of the 1986 Order applied immediately before that date.

(2) Until regulations under section 1136 of the Companies Act 2006 are made specifying a place for the purposes of section 228(2)(b), the copies and memoranda referred to in section 228 may be kept by a company—

- (a) at any place where its register of members is kept, or
- (b) at its principal place of business,

provided that place is situated in the part of the United Kingdom in which the company is registered.

(3) Until section 1068(1) of the Companies Act 2006 comes into force the notice referred to in section 228(4) must be given on the form prescribed for the purposes of section 318(4) of the 1985 Act or Article 326(4) of the 1986 Order.

(4) The provisions of section 318 of the 1985 Act or Article 326 of the 1986 Order continue to apply in relation to—

- (a) any default before 1st October 2007 in complying with section 318(1) or (5) or Article 326(1) or (5);
- (b) any request for inspection under section 318(7) or Article 326(7) made before that date;
- (c) any duty to give notice under section 318(4) or Article 326(4) arising before that date.

#### **Contracts with sole member who is a director (s.231)**

**14.**—(1) Section 231 of the Companies Act 2006 (contracts with sole member who is a director) applies to contracts entered into on or after 1st October 2007.

(2) Section 322B of the 1985 Act or Article 330B of the 1986 Order continues to apply to contracts entered into before that date.

#### **Directors' liabilities (ss.232 to 239)**

**15.**—(1) Sections 232 to 236 of the Companies Act 2006 (restrictions on provision protecting directors from liability) apply to any provision made on or after 1st October 2007.

(2) Sections 309A, 309B and 309C(1) to (3) and (6) of the 1985 Act or Article 318 of the 1986 Order (so far as it relates to directors) continue to apply in relation to any provision to which they applied immediately before that date.

**16.—**(1) Sections 237 and 238 of the Companies Act 2006 (copies of qualifying indemnity provision to be available for inspection etc) apply to—

- (a) qualifying indemnity provision within the meaning of section 237 made on or after 1st October 2007, and
- (b) qualifying third party indemnity provision within the meaning of section 309B(1) of the 1985 Act to which section 309C(4) and (5) of that Act applied immediately before that date.

(2) Until regulations under section 1136 of the Companies Act 2006 are made specifying a place for the purposes of section 237(3)(b), the copies and memoranda referred to in section 237 may be kept by a company—

- (a) at any place where its register of members is kept, or
- (b) at its principal place of business,

provided that place is situated in the part of the United Kingdom in which the company is registered.

(3) Until section 1068(1) of the Companies Act 2006 comes into force the notice referred to in section 237(5) must be given on the form prescribed for the purposes of section 318(4) of the 1985 Act or Article 326(4) of the 1986 Order.

(4) The provisions of section 318 of the 1985 Act, as applied by section 309C(4) and (5), continue to apply in relation to—

- (a) any default before 1st October 2007 in complying with section 318(1) or (5), as so applied;
- (b) any request for inspection under section 318(7), as so applied, made before that date;
- (c) any duty to give notice under section 318(4), as so applied, arising before that date.

**17.—**(1) Section 239 of the Companies Act 2006 (ratification of acts of directors giving rise to liability) applies to conduct by a director on or after 1st October 2007.

(2) Conduct by a director before that date is subject to the law relating to ratification that applied immediately before that date.

#### **Power to make provision for employees on cessation or transfer of business (s.247)**

**18.—**(1) Section 247 of the Companies Act 2006 (power to make provision for employees on cessation or transfer of business) applies to provision made on or after 1st October 2007 (subject to sub-paragraph (2)(b)).

(2) Section 719 of the 1985 Act or Article 668 of the 1986 Order continues to apply—

- (a) to provision made before that date, and
- (b) to anything sanctioned in accordance with subsection (3) of that section or paragraph (3) of that Article before that date.

#### **Records of meetings of directors (ss.248 and 249)**

**19.—**(1) Sections 248 and 249 of the Companies Act 2006 (records of meetings of directors) apply to meetings held on or after 1st October 2007.

(2) Section 382 of the 1985 Act or Article 390 of the 1986 Order continues to apply to meetings of directors held before that date.

### **Derivative claims and proceedings by members (ss.260 to 269)**

**20.**—(1) On and after 1st October 2007 sections 260 to 264 of the Companies Act 2006 (derivative claims in England and Wales or Northern Ireland) apply to all derivative claims, subject to the following provisions.

(2) Those sections do not apply, and the law in force immediately before 1st October 2007 continues to apply, where the claimant (in Northern Ireland, the plaintiff) has applied for permission (in Northern Ireland, leave) to continue the claim before that date.

(3) If, or to the extent that, the claim arises from acts or omissions that occurred before 1st October 2007, the court must exercise its powers under those sections so as to secure that the claim is allowed to proceed as a derivative claim only if, or to the extent that, it would have been allowed to proceed as a derivative claim under the law in force immediately before that date.

**21.**—(1) This paragraph applies where an application is made under section 266 or 267 (derivative proceedings in Scotland).

(2) If the cause of action arises, wholly or to any extent, from an act or omission that occurred before 1st October 2007, the court shall exercise its powers under those sections so as to secure that the proceedings in respect of that act or omission are allowed to proceed as derivative proceedings only to the extent that they could have been pursued by the applicant under the law in force immediately before that date.

### **General provisions about resolutions (ss.281 to 287)**

**22.**—(1) Sections 281 to 287 of the Companies Act 2006 (general provisions about resolutions), apply—

(a) to written resolutions to which sections 288 to 300 of that Act apply (see paragraph 24);

(b) to resolutions (other than written resolutions)—

(i) of which notice is given on or after 1st October 2007, or

(ii) that are proposed at a meeting of which notice is given on or after 1st October 2007, other than a meeting convened in pursuance of a requisition made under section 368 or 376 of the 1985 Act or Article 376 or 384 of the 1986 Order made before that date.

(2) The provisions of the 1985 Act or 1986 Order continue to apply to resolutions (other than written resolutions)—

(a) of which notice is given before 1st October 2007, or

(b) that are proposed at a meeting—

(i) of which notice was given before 1st October 2007, or

(ii) that is convened in pursuance of a requisition under section 368 or 376 of the 1985 Act or Article 376 or 384 of the 1986 Order made before that date.

(3) The provisions referred to in sub-paragraph (2) include—

section 370(6) of the 1985 Act or Article 378(6) of the 1986 Order (voting entitlement of members); and

section 378 of the 1985 Act or Article 386 of the 1986 Order (extraordinary and special resolutions).

(4) Where notice of a meeting is given over more than one day, it is treated for the purposes of this paragraph as given on the first of those days.

(5) Where copies of a requisition are deposited on more than one day, the references in this paragraph to the day on which the requisition is made shall be read as references to the first day on which the copies deposited are sufficient to require the company to act.



**23.** Any reference to an extraordinary resolution in a provision—

- (a) of a company’s memorandum or articles, or
- (b) of a contract,

continues to have effect and shall continue to be construed in accordance with section 378 of the 1985 Act or Article 386 of the 1986 Order as if that section or Article had not been repealed.

#### **Written resolutions (ss.288 to 300)**

**24.**—(1) Sections 288 to 300 of the Companies Act 2006 (written resolutions) apply to resolutions for which the circulation date (see section 290) is on or after 1st October 2007.

(2) Section 381A to 381C of, and Schedule 15A to, the 1985 Act or Article 389A to 389C of, and Schedule 15A to, the 1986 Order continue to apply to resolutions sent or circulated to any relevant member before that date.

A “relevant member” means one whose signature is required by section 381A(1) or Article 389A(1).

#### **Members’ power to require directors to call meeting (ss.303 to 305)**

**25.**—(1) Sections 303 to 305 of the Companies Act 2006 (meetings required by members) apply to requests made on or after 1st October 2007.

(2) Section 368 of the 1985 Act or Article 376 of the 1986 Order continues to apply to requisitions made before that date.

(3) Where requests are made or copies of a requisition are deposited on more than one day, the references in this paragraph to the day on which the request or requisition is made shall be read as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

#### **Notice of meetings (ss.307, 310 and 311)**

**26.**—(1) Sections 307, 310 and 311 of the Companies Act 2006 (notice of meetings) apply in relation to meetings of which notice is given on or after 1st October 2007.

(2) The provisions of the 1985 Act or the 1986 Order continue to apply in relation to a meeting of which notice was given before that date.

(3) The provisions referred to in sub-paragraph (2) include sections 369 and 370(2) of the 1985 Act or Articles 377 and 378(2) of the 1986 Order.

(4) Where notice of a meeting is given over more than one day, it is treated for the purposes of this paragraph as given on the first of those days.

#### **Special notice (s.312)**

**27.**—(1) Section 312 of the Companies Act 2006 (special notice) applies in relation to resolutions for which special notice is required where notice of the intention to move the resolution is given to the company on or after 1st October 2007.

(2) Section 379 of the 1985 Act or Article 387 of the 1986 Order continues to apply to resolutions for which special notice is required where notice of the intention to move the resolution is given to the company before that date.

#### **Accidental failure to give notice of resolution or meeting (s.313)**

**28.**—(1) Section 313 of the Companies Act 2006 (accidental failure to give notice of resolution or meeting) applies to resolutions or meetings of which notice is given on or after 1st October 2007.

(2) The reference in sub-paragraph (1) to cases in which notice is given on or after 1st October 2007 includes cases in which notice would be regarded as so given if section 313 applied.

#### **Circulation of members' statements (ss.314 to 317)**

**29.**—(1) Sections 314 to 317 of the Companies Act 2006 (circulation of members' statements) apply to requests made on or after 1st October 2007.

(2) Sections 376 and 377 of the 1985 Act or Articles 384 and 385 of the 1986 Order continue to apply in relation to requisitions made before that date.

(3) So long as such a requisition made to a private company under section 376(1)(b) or Article 384(1)(b) is not complied with, section 366 of the 1985 Act or Article 374 of the 1986 Order (duty to hold annual general meeting) continues to apply in relation to the company.

This does not apply if the company is not required to comply with the requisition (see section 377 of the 1985 Act or Article 385 of the 1986 Order).

(4) Where requests are made or copies of a requisition are deposited on more than one day, the references in this paragraph to the day on which the request or requisition is made shall be read as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

#### **Procedure at meetings and proxies (ss.318 to 331)**

**30.**—(1) Sections 318 to 323 of the Companies Act 2006 (procedure at meetings) and sections 324 to 331 (proxies) apply to meetings of which notice is given on or after 1st October 2007.

(2) The provisions of the 1985 Act or the 1986 Order continue to apply to meetings of which notice was given before that date.

(3) The provisions referred to in sub-paragraph (2) include sections 370, 370A, 372 to 375 and 378(4) of the 1985 Act or Articles 378, 378A, 380 to 383 and 386(4) of the 1986 Order.

(4) Where notice of a meeting is given over more than one day, it is treated for the purposes of this paragraph as given on the first of those days.

#### **Application of provisions to class meetings (ss.334 and 335)**

**31.**—(1) Sections 334 and 335 of the Companies Act 2006 (application of provisions of Chapter 3 to class meetings) apply to requests and meetings in relation to which the provisions applied by those sections have effect.

(2) Section 125(6) of the 1985 Act or Article 135(6) of the 1986 Order continues to apply to meetings of which notice is given before 1st October 2007.

(3) Where notice of a meeting is given over more than one day, it is treated for the purposes of sub-paragraph (2) as given on the first of those days.

#### **Annual general meetings (ss.336 to 340)**

**32.**—(1) The repeal of section 366 of the 1985 Act or Article 374 of the 1986 Order (duty to hold annual general meeting) does not affect any provision of a private company's memorandum or articles that expressly requires the company to hold an annual general meeting.

(2) Any such provision continues to have such effect as it had immediately before 1st October 2007.

(3) Provision specifying that one or more directors are to retire at an annual general meeting of the company is not provision expressly requiring the company to hold an annual general meeting.

**33.** The repeal of section 367 of the 1985 Act (default power of Secretary of State to call AGM) has effect in relation to a private company as from 1st October 2007, even if an application under that section has been made, or the Secretary of State has called or directed the calling of a meeting under that section, before that date.

**34.—(1)** The repeal of sections 376 and 377 of the 1985 Act or Articles 384 and 385 of the 1986 Order does not affect their application in relation to a requisition under section 376(1)(a) or Article 384(1)(a) made to a private company before 1st October 2007.

(2) So long as such a requisition has not been complied with, section 366 of the 1985 Act or Article 374 of the 1986 Order (duty to hold annual general meeting) continues to apply in relation to the company.

This does not apply if the company is not required to comply with the requisition (see section 377 of the 1985 Act or Article 385 of the 1986 Order).

(3) Where copies of the requisition are deposited on more than one day, the reference in subparagraph (1) to the day on which the request or requisition is made shall be read as a reference to the first day on which the copies deposited are sufficient to require the company to act.

**35.—(1)** In the case of an existing public company—

(a) section 366 of the 1985 Act or section 374 of the 1986 Order (duty to hold annual general meeting) continues to apply to determine the date by which the company must hold its first annual general meeting after 30th September 2007, and

(b) section 336 of the Companies Act 2006 (public companies: annual general meeting) applies in relation to subsequent annual general meetings.

(2) An “existing public company” means a company formed and registered before 1st October 2007 that is a public company immediately before that date.

**36.** The repeal of section 367 of the 1985 Act (default power of Secretary of State to call AGM) does not affect the operation of that section in relation to a public company where an application under that section was made before 1st October 2007.

**37.—(1)** Section 337 of the Companies Act 2006 (public companies: notice of AGM) applies to meetings of which notice is given on or after 1st October 2007.

(2) Section 369 of the 1985 Act or Article 377 of the 1986 Order continues to apply in relation to meetings of which notice is given before that date.

(3) Where notice of a meeting is given over more than one day, it is treated for the purposes of this paragraph as given on the first of those days.

**38.—(1)** Sections 338 to 340 of the Companies Act 2006 (public companies: members’ power to require circulation of resolutions for AGMs) apply to requests made on or after 1st October 2007.

(2) Sections 376 and 377 of the 1985 Act or Articles 384 and 385 of the 1986 Order continue to apply to requisitions made to a public company before that date.

(3) Where requests are made or copies of a requisition are deposited on more than one day, the references in this paragraph to the day on which the request or requisition is made shall be read as references to the first day on which the requests made or copies deposited are sufficient to require the company to act.

#### **Additional requirements for quoted companies (ss.342 to 354)**

**39.—(1)** Sections 342 to 354 of the Companies Act 2006 apply to polls taken at meetings of which notice was given on or after 1st October 2007.

(2) Where notice of a meeting is given over more than one day, it is treated for the purposes of this paragraph as given on the first of those days.

#### **Records of resolutions and meetings (ss.355 to 359)**

**40.**—(1) Sections 355 to 359 of the Companies Act 2006 (records of resolutions and meetings) apply to resolutions passed, meetings held or decisions taken on or after 1st October 2007.

(2) Sections 382, 382A, 382B and 383 of the 1985 Act or Articles 390, 390A, 390B and 391 of the 1986 Order continue to apply to resolutions passed, meetings held or decisions taken before that date.

#### **Political donations and expenditure (ss.362 to 379)**

**41.**—(1) Sections 362 to 379 of the Companies Act 2006 (political donations and expenditure) apply to donations made or expenditure incurred on or after 1st October 2007.

Section 379(2) of that Act applies as to the time when a donation is regarded as made or expenditure as incurred, including where it is made or incurred in pursuance of a contract entered into before that date.

(2) Part 10A of the 1985 Act continues to apply to donations or expenditure in relation to which the relevant time, as defined in section 347A(10) of that Act, is before that date.

(3) The repeal of that Part does not affect paragraph 3(4) of Schedule 7 to the 1985 Act (matters to be dealt with in directors' report: expressions to have same meaning as in Part 10A).

**42.** An approval resolution passed in accordance with section 347C of the 1985 Act before 1st October 2007 is treated as complying with the requirements of section 367 of the Companies Act 2006 (form of authorising resolution) although it does not comply with the requirements of that section as to the heads under which donations and expenditure are to be stated.

#### **Contents of directors' report: business review (s.417)**

**43.**—(1) Section 417 of the Companies Act 2006 (contents of directors' report: business review) applies to directors' reports for financial years beginning on or after 1st October 2007.

(2) Sections 234(1)(a), 234ZZB, 246(4)(a) and 246A(2A) of the 1985 Act or Articles 242(1), 242ZZB, 254(4)(a) and 254A(2A) of the 1986 Order continue to apply to directors' reports for financial years beginning before that date.

#### **Appointment of auditors of private companies (ss.485 to 488)**

**44.**—(1) Sections 485 to 488 of the Companies Act 2006 (appointment of auditors of private companies) apply in relation to appointments for financial years beginning on or after 1st October 2007.

(2) Sections 384 to 388A of the 1985 Act or Articles 392 to 396A of the 1986 Order continue to apply in relation to appointments for financial years beginning before that date.

(3) Where—

(a) a private company has elected under section 386 of the 1985 Act or Article 394 of the 1986 Order to dispense with the annual appointment of auditors, and

(b) the election is in force immediately before 1st October 2007,

section 487(2)(a) of the Companies Act 2006 (no deemed reappointment of auditors appointed by directors) does not prevent the deemed reappointment under that subsection of auditors first appointed before 1st October 2007.

**45.—**(1) This paragraph applies where immediately before 1st October 2007 a resolution of a private company under section 390A of the 1985 Act or Article 398A of the 1986 Order (remuneration of auditors) was in force and was expressed (in whatever terms) to continue to have effect so long as a resolution under section 386 of that Act or Article 394 of that Order (election to dispense with annual appointment of auditors) continued in force.

(2) The repeal of section 386 of the 1985 Act or Article 394 of the 1986 Order does not affect the continued operation of the resolution, which shall continue to have effect until—

- (a) it is revoked or superseded by a further resolution,
- (b) the auditors to which it applies cease to hold office, or
- (c) it otherwise ceases to have effect in accordance with its terms.

### **Fraudulent trading (s.993)**

**46.—**(1) Section 458 of the 1985 Act or Article 451 of the 1986 Order (offences of fraudulent trading) continues to apply to offences completed before 1st October 2007.

(2) Where, in the case of an offence—

- (a) a relevant event occurs before 1st October 2007, and
- (b) another relevant event occurs on or after 1st October 2007,

the offence must be charged under section 993 of the Companies Act 2006 (and not under section 458 of the 1985 Act or Article 451 of the 1986 Order).

(3) If in the case of any such offence a relevant event occurred before 15th January 2007(1) section 993(3)(a) applies with the substitution of “seven years” for “ten years”.

(4) “Relevant event” means an act, omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

### **Protection of members against unfair prejudice (ss.994 to 999)**

**47.** Section 999 of the Companies Act 2006 (provisions applying where court order alters a company’s constitution) does not apply (by virtue of section 1297 of that Act) to an order of the court made before 1st October 2007.

### **Company investigations (ss.1035 to 1039)**

**48.** Sections 1035 to 1039 of the Companies Act 2006 (company investigations: amendments) apply where an inspector is appointed under a provision of Part 14 of the 1985 Act on or after 1st October 2007.

### **Repeal of requirement for private companies to lay accounts and reports before general meeting**

**49.—**(1) The repeals of—

- (a) section 241 of the 1985 Act or Article 264 of the 1986 Order (accounts and reports to be laid before company in general meeting) as it applies to private companies, and
- (b) sections 252 and 253 of the 1985 Act or Articles 260 and 261 of the 1986 Order (election by private company to dispense with laying of accounts and report before general meeting),

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(1) The date on which section 10 of the Fraud Act 2006 (c.35) came into effect; see paragraph 2 of Schedule 2 to that Act and article 2 of the Fraud Act 2006 (Commencement) Order 2006 (S.I. 2006/3200).

have effect in relation to annual accounts and reports for financial years ending on or after 1st October 2007.

(2) Those provisions continue to have effect in relation to annual accounts for reports for financial years ending before that date.

### **Repeal of definition of “connected person”**

**50.** The repeal of section 346 of and Schedule 13 to the 1985 Act or Article 354 of and Schedule 13 to the 1986 Order (meaning of “connected person”) does not affect—

- (a) section 317(3)(b) of the 1985 Act or Article 325(3)(b) of the 1986 Order (directors to disclose interest in contracts);
- (b) section 7E and 7F(3) of the Industrial and Provident Societies Act 1965 or section 7D and 7E(3) of the Industrial and Provident Societies Act (Northern Ireland) 1969 (transactions with committee members: whether person “connected with” committee member or “associated with” society);
- (c) section 96B(2)(a) of the Financial Services and Markets Act 2000<sup>(2)</sup> (disclosure rules: responsibility for compliance: meaning of person connected with person having managerial responsibilities within an issuer).

### **Provisions relating to trial and punishment of offences**

**51.** Any saving in this Schedule for the effect of a provision of the 1985 Act or 1986 Order that creates an offence extends to the entry relating to that provision in Schedule 24 to that Act or Schedule 23 to that Order (punishment of offences).

## SCHEDULE 4

Article 10(1)

### CONSEQUENTIAL AMENDMENTS

## PART 1

### AMENDMENTS OF THE 1985 ACT

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

**1.—(1)** In section 31(2) (resolution of directors changing of name of company to comply with direction of Secretary of State), omit the second sentence and after that subsection insert—

“(2A) Where such a resolution is passed by the directors, the company must give notice to the registrar of companies of the change.

(2B) Where a company changes its name under this section, the registrar of companies shall (subject to section 26) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(2C) A change of name by a company under this section does not affect any right or obligations of the company or render defective any legal proceedings by or against it; and

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(2) 2000 c.8; section 96B was inserted by S.I. 2005/381.

any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.”.

(2) In section 51(4) (re-registration of unlimited company as limited: procedural requirements)—

(a) omit the words from “The special resolution” to “15 days); and”; and

(b) for “under section 380” substitute “under section 30 of the Companies Act 2006”.

(3) In section 80(8) (resolution of company giving, varying, revoking or renewing authority of directors to allot shares), omit the words from “but it is in any case subject to section 380” to the end and substitute “but in any case Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to it.”.

(4) In section 128(1) (registration of particulars of special rights) for “section 380” substitute “section 30 of the Companies Act 2006”.

(5) In section 129(1) (registration of newly created class rights) for “section 380” substitute “section 30 of the Companies Act 2006”.

(6) In section 147(2) (resolution of directors altering memorandum on company ceasing to be public company following acquisition of its own shares), for the second sentence substitute “Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to such a resolution.”.

(7) In section 156(5)(a) (financial assistance by private company for acquisition of its own shares: statutory declaration to be delivered to registrar along with copy of special resolution), for “section 380” substitute “section 30 of the Companies Act 2006”.

(8) In section 166 (authority for market purchase of own shares), for subsection (7) substitute—

“(7) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to a resolution of a company conferring, varying, revoking or renewing authority under this section.”.

(9) In section 380(2) (resolutions or agreements to be embodied in copies of articles issued by the company), for “every such resolution or agreement” substitute “every resolution or agreement to which Chapter 3 of Part 3 of the Companies Act 2006 applies (resolutions and agreements affecting a company’s constitution) and which is”.

(10) In section 699 (overseas companies: provisions applying to Channel Islands and Isle of Man companies)—

(a) in subsection (1) after “of this Act” insert “and the Companies Act 2006”; and

(b) in subsection (3) for the words from “section 380” to “15 days)” substitute “Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company’s constitution)”.

### **Reference to extraordinary resolution**

2.—(1) In section 125(2) (variation of class rights) for “an extraordinary resolution” substitute “a special resolution”.

(2) This amendment applies—

(a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;

(b) to resolutions passed at a meeting of which notice is given on or after that date.

### **Provisions referring to general meetings of private companies**

3.—(1) In section 235(1) (auditors' report on company's annual accounts), for the words from "are to be laid before the company" to the end substitute—

"are, during their tenure of office—

- (a) in the case of a private company, to be sent out to members under section 238(1);
- (b) in the case of a public company, to be laid before the company in general meeting under section 241."

(2) In section 238 (persons entitled to receive copies of accounts and reports)—

- (a) in subsection (1) omit the words from "not less than 21 days" to the end;
- (b) omit subsection (4); and
- (c) in subsection (5) after "this section" insert "or section 238A".

(3) After that section insert—

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

**238A.**—(1) The time allowed for sending out copies of the company's annual accounts and reports is as follows.

(2) A private company must comply with section 238(1) not later than—

- (a) the end of the period for delivering accounts and reports (see section 244), or
- (b) if earlier, the date on which it actually delivers its accounts and reports under section 242.

(3) A public company must comply with section 238(1) not less than 21 days before the date of the meeting at which copies of the documents are to be laid in accordance with section 241.

(4) If in the case of a public company copies are sent out later than is required by subsection (3), they shall, despite that, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting."

(4) References in any enactment or instrument to the period for laying and delivering accounts, and reports including those in section 244 (which defines that period), shall be read in relation to a private company as references to the period for delivering accounts and reports.

(5) In section 241 (accounts and reports to be laid before company in general meeting), in subsection (1) for "a company" substitute "a public company".

(6) In section 270(3) (distributions: justification by reference to company's last annual accounts) for the words from "that is to say" to the end substitute—

"that is to say—

- (a) in the case of a private company, those prepared under Part 7 that were last sent to members in accordance with section 238(1);
- (b) in the case of a public company, those prepared under Part 7 which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid (and for this purpose accounts are laid if section 241(1) has been complied with in relation to them)."

(7) In section 271 (distributions: auditors' report on accounts), in subsection (4) omit the words from "and a copy" to the end and after that subsection insert—

"(4A) A copy of the auditors' statement under subsection (4) must—

- (a) in the case of a private company, have been circulated to members along with the copies of the accounts sent to them under section 238(1);



(b) in the case of a public company, have been laid before the company in general meeting.”.

(8) These amendments have effect for financial years ending on or after 1st October 2007.

#### **Provisions referring to written resolutions of private companies**

4.—(1) Section 390 (right of auditors to attend company meetings etc) is amended as follows.

(2) Omit subsection (1A).

(3) In subsection (2)—

(a) in the opening words, omit “in accordance with section 381A”, and

(b) in paragraph (a), for “Schedule 15A” substitute “Chapter 2 of Part 13 of the Companies Act 2006”.

#### **References to loans, quasi-loans and other dealings in favour of directors etc**

5. In section 317 (directors to disclose interest in contracts), in subsection (6) for “section 330” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

6.—(1) Parts 2 and 3 of Schedule 6 (disclosure of information: loans, quasi-loans and other transactions in favour of directors etc) are amended as follows.

(2) In paragraphs 15(a) and 16(a) for “section 330” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

(3) In paragraph 19(a) for “was prohibited by section 330” substitute “was one in respect of which approval was required under section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

(4) In paragraph 22(2)—

(a) in paragraph (d) for “section 330(6) or (7) of this Act” substitute “section 203 of the Companies Act 2006”; and

(b) in paragraph (e) for “section 330(6)” substitute “section 203(1)(b) of the Companies Act 2006”.

(5) In paragraph 24(2)(c) for “subsection (6) or (7) of section 330” substitute “section 203 of the Companies Act 2006”.

(6) In paragraph 26—

(a) for “Section 345 of this Act” substitute “Section 258 of the Companies Act 2006”, and

(b) for “Part 10” substitute “Part 10 of that Act”.

(7) In paragraph 27, for sub-paragraph (1) substitute—

“(1) The following provisions of the Companies Act 2006 apply for the purposes of this Part of this Schedule—

(a) section 202 (meaning of “credit transaction”);

(b) section 211 (value of transactions and arrangements);

(c) section 212 (person for whom a transaction or arrangement is entered into);

(d) sections 252 to 255 and Schedule 1 (persons connected with a director).”.

(8) In paragraph 28—

(a) in paragraph (a) for “subsection (6) or (7) of section 330 of this Act” substitute “section 203 of the Companies Act 2006”;

(b) in paragraphs (b) and (c) for “either of those subsections” substitute “that section”.

- (9) In paragraph 29(3)—
- (a) for “Section 345 of this Act” substitute “Section 258 of the Companies Act 2006”, and
  - (b) for “Part 10” substitute “Part 10 of that Act”.
- (10) In paragraph 30 for the words from “of this Act” to the end of paragraph (b) substitute—  
“of the Companies Act 2006 apply for the purposes of this Part of this Schedule—
- (a) section 199 (meaning of “quasi-loan”),
  - (b) section 202 (meaning of “credit transaction”), and
  - (c) section 212 (person for whom a transaction or arrangement is entered into);”.
- (11) These amendments apply in relation to arrangements and transactions entered into on or after 1st October 2007.

7.—(1) In Part 4 of Schedule 9 (special provisions for banking companies and groups: additional disclosure: emoluments of directors and others)—

- (a) in paragraph 2 (loans, quasi-loans and other dealings), for “section 330” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”;
- (b) in paragraph 3(5) (other transactions, arrangements and agreements: meaning of “connected person”), for “Section 346 of this Act applies” substitute “Sections 252 to 255 of, and Schedule 1 to, the Companies Act 2006 apply”.

(2) These amendments apply in relation to arrangements and transactions entered into on or after 1st October 2007.

### **Provisions relating to the appointment of auditors**

8.—(1) In section 384 (duty to appoint auditors)—

- (a) in subsection (1) for “Every company” substitute “Every public company”;
- (b) in subsection (2) omit the words from “except in the case of a private company” to the end;
- (c) in subsection (3) omit the words from “or 385A(2)” to the end; and
- (d) omit subsection (4).

(2) In section 385 (appointment at general meeting at which accounts laid), in subsection (1) omit the words from “and to a private company” to the end.

(3) In section 387 (appointment by Secretary of State in default of appointment by company), in subsection (1) for “If in any case” substitute “If in the case of a public company”.

(4) In section 388 (filling of casual vacancies)—

- (a) in subsection (1) after “The directors” insert “of a public company”;
- (b) in subsection (3) for “a company” substitute “a public company”.

(5) In section 388A (certain companies exempt from obligation to appoint auditors)—

- (a) in subsection (1) for “A company” substitute “A public company”;
- (b) in subsection (2) for “a company” substitute “a public company”;
- (c) omit subsection (4); and
- (d) in subsection (5), omit “or (4)”.

(6) These amendments have effect in relation to appointments for financial years beginning on or after 1st October 2007.

### References to provisions about protection of members from unfair prejudice

9. In section 126 (saving for court’s powers under other provisions), for “sections 459 to 461 (protection of minorities)” substitute “Part 30 of the Companies Act 2006 (protection of members against unfair prejudice)”.

10. In paragraph 9 of Schedule 21 (effect of registration under section 680: saving for powers of company to alter its constitution etc), for “None of the provisions of this Act (except section 461(3))” substitute “None of the provisions of this Act, and none of the provisions of the Companies Act 2006 (except section 996(2))”.

### Removal of references to repealed enactments

11.—(1) Part 15 (orders imposing restrictions on shares) is amended as follows.

(2) In the Part heading for “SECTIONS 210, 216, 445” substitute “SECTION 445”.

(3) In section 454(1), in the opening words, for the words from “pursuant to sections 210(5A)” to “of that order” substitute “pursuant to section 445(1A) or 456(1A)”.

(4) In section 454(2) for the words from “sections 210(5A)” to “section 216(1A)” substitute “section 445(1A) or 456(1A)”.

(5) In section 454(3) for the words from “sections 210(5A)” to “section 216(1A)” substitute “section 445(1A) or 456(1A)”.

(6) In section 455(1), in the opening words, for the words from “sections 210(5A)” to “section 216(1A)” substitute “section 445(1A) or 456”.

(7) In section 455(2) for the words from “sections 210(5A)” to “section 216(1A)” substitute “section 445(1A) or 456”.

(8) In section 456(2) omit the words from “and if the order” to the end.

(9) In section 456(3)(b) omit “210 or”.

(10) In section 456(4), in the second sentence, omit the words from “(unless” to “section 216)”.

(11) In section 456(5)(a) omit the words from “(unless” to “section 216)”.

### Supplementary provisions relating to offences

12. In section 730(1) (punishment of offences) after “offences under this Act” substitute “(other than an offence under Part 14 or 15)”.

13. Omit section 730(5) (meaning of “officer in default”) and after that section insert—

#### “Meaning of “officer in default”

**730A.**—(1) This section applies to—

- (a) offences under this Act (other than an offence under Part 14 or 15),
- (b) offences under the insider dealing legislation, and
- (c) offences under the Companies Consolidation (Consequential Provisions) Act 1985.

(2) For the purposes of an offence to which this section applies “officer who is in default” means any officer who knowingly and wilfully authorises or permits the default, refusal or contravention in question.”.

14.—(1) Section 731 (summary proceedings) is amended as follows.

(2) Before subsection (1) insert—

“(A1) This section applies to—

- (a) offences under this Act (other than an offence under Part 14 or 15),
- (b) offences under the insider dealing legislation, and
- (c) offences under the Companies Consolidation (Consequential Provisions) Act 1985.

(3) In subsection (1) for “any offence under the Companies Acts” substitute “an offence to which this section applies”.

(4) In subsections (2) and (3) for “an offence under the Companies Acts” substitute “an offence to which this section applies”.

**15.** In section 732 (prosecution by public authorities), for subsections (1) and (2) substitute—

“(1) Proceedings in England and Wales for an offence under section 245E or 245G may only be brought by or with the consent of the Secretary of State or the Director of Public Prosecutions.”.

**16.—(1)** In section 733 (offences by bodies corporate)—

- (a) in subsection (1) for the words from “any of sections 210” to “453A” substitute “section 245E(3), 245G(7) or 394A(1)”; and
- (b) omit subsection (4).

(2) In section 734(1) (criminal proceedings against unincorporated bodies) for the words from “section 245E(3)” to “453A” substitute “section 245E(3), 245G(7) or 394A(1)”.

## PART 2

### AMENDMENTS OF THE 1986 ORDER

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

**17.—(1)** In Article 41(2) (resolution of directors changing of name of company to comply with direction of Department), omit the second sentence and after that paragraph insert—

“(2A) Where such a resolution is passed by the directors, the company must give notice to the registrar of the change.

(2B) Where a company changes its name under this Article, the registrar shall (subject to Article 36) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(2C) A change of name by a company under this Article does not affect any right or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.”.

(2) In Article 61(4) (re-registration of unlimited company as limited: procedural requirements)—

- (a) omit the words from “The special resolution” to “15 days); and”; and
- (b) for “under Article 388” substitute “under section 30 of the Companies Act 2006”.

(3) In Article 90(8) (resolution of company giving, varying, revoking or renewing authority of directors to allot shares), omit the words from “but it is in any case subject to Article 388” to the end and substitute “but in any case Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to it.”.

(4) In Article 138(1) (registration of particulars of special rights) for “Article 388” substitute “section 30 of the Companies Act 2006”.

(5) In Article 139(1) (registration of newly created class rights) for “Article 388” substitute “section 30 of the Companies Act 2006”.

(6) In Article 157(2) (resolution of directors altering memorandum on company ceasing to be public company following acquisition of its own shares), for the second sentence substitute “Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to such a resolution.”.

(7) In Article 166(5)(a) (financial assistance by private company for acquisition of its own shares: statutory declaration to be delivered to registrar along with copy of special resolution), for “Article 388” substitute “section 30 of the Companies Act 2006”.

(8) In Article 176 (authority for market purchase of own shares), for paragraph (7) substitute—

“(7) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to a resolution of a company conferring, varying, revoking or renewing authority under this Article.”.

(9) In Article 388(2) (resolutions or agreements to be embodied in copies of articles issued by the company), for “every such resolution or agreement” substitute “every resolution or agreement to which Chapter 3 of Part 3 of the Companies Act 2006 applies (resolutions and agreements affecting a company’s constitution) and which is”.

#### **Reference to extraordinary resolution**

**18.**—(1) In Article 135(2) (variation of class rights) for “an extraordinary resolution” substitute “a special resolution”.

(2) This amendment applies—

- (a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;
- (b) to resolutions passed at a meeting of which notice is given on or after that date.

#### **Provisions referring to general meetings of private companies**

**19.**—(1) In Article 243(1) (auditors’ report on company’s annual accounts), for the words from “are to be laid before the company” to the end substitute—

“are, during their tenure of office—

- (a) in the case of a private company, to be sent out to members under Article 246(1);
- (b) in the case of a public company, to be laid before the company in general meeting under Article 249.”.

(2) In Article 246 (persons entitled to receive copies of accounts and reports)—

- (a) in paragraph (1) omit the words from “not less than 21 days” to the end;
- (b) omit paragraph (4); and
- (c) in paragraph (5) after “this Article” insert “or Article 246A”.

(3) After that Article insert—

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

**246A.**—(1) The time allowed for sending out copies of the company’s annual accounts and reports is as follows.

- (2) A private company must comply with Article 246(1) not later than—
- (a) the end of the period for delivering accounts (see Article 252), or
  - (b) if earlier, the date on which it actually delivers its accounts and reports under Article 250.
- (3) A public company must comply with Article 246(1) not less than 21 days before the date of the meeting at which copies of the documents are to be laid in accordance with Article 249.
- (4) If in the case of a public company copies are sent out later than is required by paragraph (3), they shall, despite that, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.”.
- (4) References in any enactment or instrument to the period for laying and delivering accounts, including those in Article 252 (which defines that period), shall be read in relation to a private company as references to the period for delivering accounts.
- (5) In Article 249 (accounts and reports to be laid before company in general meeting), in paragraph (1) for “a company” substitute “a public company”.
- (6) In Article 278(3) (distributions: justification by reference to company’s last annual accounts) for the words from “that is to say” to the end substitute—
- “that is to say—
- (a) in the case of a private company, those prepared under Part 8 that were last sent to members in accordance with Article 246(1);
  - (b) in the case of a public company, those prepared under Part 8 which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid (and for this purpose accounts are laid if Article 249(1) has been complied with in relation to them).”.
- (7) In Article 279 (distributions: auditors’ report on accounts), in paragraph (4) omit the words from “and a copy” to the end and after that paragraph insert—
- “(4A) A copy of the auditors’ statement under paragraph (4) must—
- (a) in the case of a private company, have been circulated to members along with the copies of the accounts sent to them under Article 246(1);
  - (b) in the case of a public company, have been laid before the company in general meeting.”.
- (8) These amendments have effect for financial years ending on or after 1st October 2007.

### **Provisions referring to written resolutions of private companies**

- 20.**—(1) Article 398 (right of auditors to attend company meetings etc) is amended as follows.
- (2) Omit paragraph (1A).
- (3) In paragraph (2)—
- (a) in the opening words, omit “in accordance with Article 389A”, and
  - (b) in sub-paragraph (a), for “Schedule 15A” substitute “Chapter 2 of Part 13 of the Companies Act 2006”.

### **References to loans, quasi-loans and other dealings in favour of directors**

- 21.** In Article 325 (directors to disclose interest in contracts), in paragraph (6) for “Article 338” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

**22.**—(1) Parts 2 and 3 of Schedule 6 (disclosure of information: loans, quasi-loans and other transactions in favour of directors etc) are amended as follows.

(2) In paragraphs 15(a) and 16(a) for “Article 338” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

(3) In paragraph 19(a) for “was prohibited by Article 338” substitute “was one in respect of which approval was required under section 197, 198, 200, 201 or 203 of the Companies Act 2006”.

(4) In paragraph 22(2)—

(a) in paragraph (d) for “Article 338(6) or (7)” substitute “section 203 of the Companies Act 2006”; and

(b) in paragraph (e) for “Article 338(6)” substitute “section 203(1)(b) of the Companies Act 2006”.

(5) In paragraph 24(2)(c) for “Article 338(6) or (7)” substitute “section 203 of the Companies Act 2006”.

(6) In paragraph 26—

(a) for “Article 353 (power of Department to alter sums by order subject to negative resolution)” substitute “Section 258 of the Companies Act 2006 (power to increase financial limits)”, and

(b) for “Part 11 of this Order” substitute “Part 10 of that Act”.

(7) In paragraph 27, for sub-paragraph (1) substitute—

“(1) The following provisions of the Companies Act 2006 apply for the purposes of this Part—

(a) section 202 (meaning of “credit transaction”);

(b) section 211 (value of transactions and arrangements);

(c) section 212 (person for whom a transaction or arrangement is entered into);

(d) sections 252 to 255 and Schedule 1 (persons connected with a director).”.

(8) In paragraph 28—

(a) in sub-paragraph (a) for “paragraph (6) or (7) of Article 338” substitute “section 203 of the Companies Act 2006”, and

(b) in sub-paragraphs (b) and (c) for “either of those paragraphs” substitute “that section”.

(9) In paragraph 29(3)—

(a) for “Article 353 (power of Department to alter money sums by order subject to negative resolution)” substitute “Section 258 of the Companies Act 2006 (power to increase financial limits)”, and

(b) for “Part 11 of this Order” substitute “Part 10 of that Act”.

(10) In paragraph 30 for the words from “apply for the purposes of this Part” to the end of paragraph (b) substitute—

“of the Companies Act 2006 apply for the purposes of this Part—

(a) section 199 (meaning of “quasi-loan”),

(b) section 202 (meaning of “credit transaction”), and

(c) section 212 (person for whom a transaction or arrangement is entered into);”.

(11) These amendments apply in relation to arrangements and transactions entered into on or after 1st October 2007.

**23.**—(1) In Part 4 of Schedule 9 (special provisions for banking companies and groups: additional disclosure: emoluments of directors and others)—

- (a) in paragraph 2 (loans, quasi-loans and other dealings), for “Article 338” substitute “section 197, 198, 200, 201 or 203 of the Companies Act 2006”;
- (b) in paragraph 3(5) (other transactions, arrangements and agreements: meaning of “connected person”), for “Article 354 applies” substitute “Sections 252 to 255 of, and Schedule 1 to, the Companies Act 2006 apply”.

(2) These amendments apply in relation to arrangements and transactions entered into on or after 1st October 2007.

### **Provisions relating to the appointment of auditors**

**24.**—(1) In Article 392 (duty to appoint auditors)—

- (a) in paragraph (1) for “Every company” substitute “Every public company”;
- (b) in paragraph (2) omit the words from “except in the case of a private company” to the end;
- (c) in paragraph (3) omit the words from “or 393A(2)” to the end; and
- (d) omit paragraph (4).

(2) In Article 393 (appointment at general meeting at which accounts laid), in paragraph (1) omit the words from “and to a private company” to the end.

(3) In Article 395 (appointment by Department in default of appointment by company), in paragraph (1) for “If in any case” substitute “If in the case of a public company”.

(4) In Article 396 (filling of casual vacancies)—

- (a) in paragraph (1) after “The directors” insert “of a public company”;
- (b) in paragraph (3) for “a company” substitute “a public company”.

(5) In Article 396A (certain companies exempt from obligation to appoint auditors)—

- (a) in paragraph (1) for “A company” substitute “A public company”;
- (b) in paragraph (2) for “a company” substitute “a public company”;
- (c) omit paragraph (4); and
- (d) in paragraph (5), omit “or (4)”.

(6) These amendments have effect in relation to appointments for financial years beginning on or after 1st October 2007.

### **References to provisions about protection of members from unfair prejudice**

**25.** In Article 136 (saving for court’s powers under other provisions), for “Articles 452 to 454 (protection of minorities)” substitute “Part 30 of the Companies Act 2006 (protection of members against unfair prejudice)”.

**26.** In paragraph 9 of Schedule 20 (effect of registration under Article 629: saving for powers of company to alter its constitution etc), for “None of the provisions of this Order (except Article 454(3))” substitute “None of the provisions of this Order, and none of the provisions of the Companies Act 2006 (except section 996(2)),”.

### **Removal of references to repealed enactments**

**27.**—(1) Part 16 (orders imposing restrictions on shares) is amended as follows.

(2) In the Part heading for “ARTICLES 218, 224 AND 438” substitute “ARTICLE 438”.



(3) In Article 447(1), in the opening words, for the words from “pursuant to Articles 218(5A) to “of that order)” substitute “pursuant to Article 438(1A) or 449(1A)”.

(4) In Article 447(2) for the words from “Article 218(5A)” to “Article 224(1A)” substitute “Article 438(1A) or 449(1A)”.

(5) In Article 447(3) for the words from “Article 218(5A)” to “Article 224(1A)” substitute “Article 438(1A) or 449(1A)”.

(6) In Article 448(1), in the opening words, for the words from “Articles 218(5A)” to “Article 224(1A)” substitute “Article 438(1A) or 449”.

(7) In Article 448(2) for the words from “Articles 218(5A)” to “Article 224(1A)” substitute “Article 438(1A) or 449”.

(8) In Article 449(2) omit the words from “and if the order” to the end.

(9) In Article 449(3)(b) omit “218 or”.

(10) In Article 449(4), in the second sentence, omit the words from “(unless” to “Article 224)”.

(11) In Article 449(5)(a) omit the words from “(unless” to “Article 224)”.

## PART 3

### AMENDMENTS OF OTHER ENACTMENTS AND INSTRUMENTS

#### **Harbours Act 1964 (c.40)**

**28.** In section 42(6) of the Harbours Act 1964 (accounts and reports relating to harbour activities and associated activities: application of provisions of Companies Act 1985), after “the Companies Act 1985” insert “and the Companies Act 2006”.

#### **Industrial and Provident Societies Act 1965 (c.12)**

**29.** In section 53(1) of the Industrial and Provident Societies Act 1965 (conversion of company into registered society) for “by a special resolution as defined by section 378 of the Companies Act 1985” substitute “by special resolution”.

#### **Industrial and Provident Societies Act (Northern Ireland) 1969 (c.24 (N.I.))**

**30.** In section 62(1) of the Industrial and Provident Societies Act (Northern Ireland) 1969 (conversion of company into registered society) for “by a special resolution as defined by Article 386 of that Order” substitute “by special resolution”.

#### **Atomic Energy Authority Act 1971 (c.11)**

**31.** In the Atomic Energy Authority Act 1971, for section 14 substitute—

##### **“Accounts of companies to be laid before Parliament**

**14.** As soon as practicable after either of the companies—

- (a) if it is a private company, has sent to members copies of accounts in accordance with section 238 of the Companies Act 1985, or
- (b) if it is a public company, has laid accounts before the company in general meeting in accordance with section 241 of that Act,

the Secretary of State shall lay before each House of Parliament a copy of those accounts and of any documents annexed or attached to them.”.

#### **Local Government Act 1972 (c.70)**

**32.** In Schedule 12A to the Local Government Act 1972 (access to information), in paragraphs 8(a) and 19(a) (information not exempt if required to be registered under the Companies Act 1985) for “the Companies Act 1985” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

#### **Judicature (Northern Ireland) Act 1978 (c.23)**

**33.** In section 35(2) of the Judicature (Northern Ireland) Act 1978 (no appeal from High Court to Court of Appeal in certain circumstances), in paragraph (g)(iii) for “the Companies (Northern Ireland) Order 1986” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

#### **Aircraft and Shipbuilding Industries (Northern Ireland) Order 1979 (S.I. 1979/294 (N.I. 1))**

**34.** In Article 12 of the Aircraft and Shipbuilding (Northern Ireland) Order 1979 (accounts and reports of principal companies to be laid before Assembly), for paragraph (1) substitute—

“(1) The Department shall, as soon as practicable in the case of each principal company, lay before the Assembly a copy of the documents mentioned in paragraph (2) which are—

- (a) if the company is a private company, sent to members in accordance with Article 246 of the Companies (Northern Ireland) Order 1986, or
- (b) if the company is a public company, laid before the company in general meeting in accordance with Article 249 of that Order.”.

#### **Industry Act 1980 (c.33)**

**35.** In section 3 of the Industry Act 1980 (finances of companies transferred to the Secretary of State), for subsection (5) substitute—

“(5) As soon as practicable after a company to which this section applies—

- (a) if it is a private company, has sent to members copies of accounts in accordance with section 238 of the Companies Act 1985 or Article 246 of the Companies (Northern Ireland) Order 1986, or
- (b) if it is a public company, has laid accounts before the company in general meeting in accordance with section 241 of that Act or Article 249 of that Order,

the Secretary of State shall lay before each House of Parliament a copy of those accounts and of any documents annexed or attached to them.”.

#### **Industrial Development (Northern Ireland) Order 1982 (S.I. 1982/1083 (N.I. 15))**

**36.** In Article 13(2) of the Industrial Development (Northern Ireland) Order 1982 (power of Invest Northern Ireland to acquire shares from dissenting shareholders), for “Articles 421 to 423 of the Companies (Northern Ireland) Order 1986” substitute “sections 979 to 982 of the Companies Act 2006”.

### **Food Act 1984 (c.30)**

**37.** In section 51(2)(a) of the Food Act 1984 (authority required for sale by company of market undertaking or rights), for “by a special resolution of the members passed in the manner provided in Part 11 of that Act” substitute “by special resolution”.

### **Companies Consolidation (Consequential Provisions) Act 1985 (c.9)**

**38.** In section 2 of the Companies Consolidation (Consequential Provisions) Act 1985 (re-registration of old public company as public company), for subsection (3) substitute—

“(3) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to a resolution of the directors under this section.”.

### **Insolvency Act 1986 (c.45)**

**39.**—(1) Section 84 of the Insolvency Act 1986 (resolutions for voluntary winding up) is amended as follows.

(2) In subsection (1), omit paragraph (c).

(3) In subsection (2) for “any of the paragraphs” substitute “either of the paragraphs”.

(4) For subsection (3) substitute—

“(3) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to a resolution under paragraph (a) of subsection (1) as well as a special resolution under paragraph (b).”.

(5) These amendments apply—

(a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;

(b) to resolutions passed at a meeting of which notice is given on or after that date.

**40.** In section 159 of that Act (powers of court to be cumulative) for “the Companies Act” substitute “the Companies Acts”.

**41.**—(1) In section 165 of that Act (voluntary winding up: powers of liquidator)—

(a) in subsection (2)(a) for “extraordinary resolution” substitute “special resolution”; and

(b) in subsection (4)(c) for “special or extraordinary resolution” substitute “special resolution”.

(2) These amendments apply—

(a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;

(b) to resolutions passed at a meeting of which notice is given on or after that date.

**42.**—(1) Section 187 of that Act (power of liquidator to make payments to provide for employees or former employees on cessation or transfer of business) is amended as follows.

(2) In subsection (1) (power to act on decision of company made before commencement of winding up) for “section 719 of the Companies Act” substitute “section 247 of the Companies Act 2006”.

(3) For subsection (2) (power of liquidator to make provision after winding up has commenced) substitute—

“(2) The liquidator may, after the winding up has commenced, make any such provision as is mentioned in section 247(1) if—

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Companies Act 2006 (Commencement No. 4 and Commencement No. 3 (Amendment)) Order 2007 No. 2607*

- (a) the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up,
- (b) the exercise of the power has been sanctioned by a resolution of the company, and
- (c) any requirements of the company's memorandum or articles as to the exercise of the power conferred by section 247(1) are complied with."

**43.** In section 251 of that Act (expressions used generally in First Group of Parts), for the closing words substitute—

“Any expression (other than one defined above in this section)—

- (a) for whose interpretation provision is made by Part 26 of the Companies Act, or
- (b) that is defined for the purposes of the Companies Acts,

has the same meaning in this Group of Parts.”

**44.** In sections 411(3) and 414(8) of, and paragraph 2(1) of Schedule 8 to, that Act (purposes for which company insolvency rules or fees orders may be made), for “the Companies Act” substitute “the Companies Acts”.

**45.** In section 436 of that Act (expressions used generally in the Act), at the appropriate place insert—

““the Companies Acts” means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Great Britain;”

#### **Company Directors Disqualification Act 1986 (c.46)**

**46.** In section 4(1)(a) of the Company Directors Disqualification Act 1986 (disqualification for fraudulent trading), for “section 458 of the Companies Act” substitute “section 993 of the Companies Act 2006”.

#### **Building Societies Act 1986 (c.53)**

**47.—**(1) In section 54(1)(b) of the Building Societies Act 1986 (disclosure of inspectors' reports to the Financial Services Authority) for “, 442 or 446” substitute “or 442”.

(2) This does not affect the application of that provision in relation to a report under section 446 of the 1985 Act made by inspectors appointed before the repeal of that section.

**48.—**(1) Section 101(6) of that Act (protective provisions for newly formed successor companies: interpretation) is amended as follows.

(2) In the definition of “concert party agreement” for “section 204 of the Companies Act 1985 or Article 212 of the Companies (Northern Ireland) Order 1986” substitute “section 824 of the Companies Act 2006.

(3) In the closing words—

- (a) for the words from “the Companies Act 1985” to “1986” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”, and
- (b) for “that Act or that Order” substitute “those Acts”.

**49.—**(1) In Schedule 15 to that Act (application of provisions relating to winding up of companies), omit paragraphs 26 and 53.

(2) These amendments apply—

- (a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;

(b) to resolutions passed at a meeting of which notice is given on or after that date.

**50.** In Schedule 15A to that Act (application of other companies insolvency legislation to building societies), in paragraph 38(3) for “the Companies (Northern Ireland) Order 1986” substitute “the Companies Acts”.

### **Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))**

**51.** In Article 4 of the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (re-registration of old public company as public company), for paragraph (3) substitute—

“(3) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to a resolution of the directors under this Article.”.

### **Companies Act 1989 (c.40)**

**52.** In section 24(2) of the Companies Act 1989 (eligibility for appointment as company auditor: meaning of “company auditor”), after “Chapter 5 of Part 11 of the Companies Act 1985” insert “or Chapter 2 of Part 16 of the Companies Act 2006”.

**53.** In section 53(1) of that Act (eligibility for appointment as auditor: definitions), in the definition of “company” after “section 384 of the Companies Act 1985” insert “or section 485 of the Companies Act 2006”.

### **Local Government and Housing Act 1989 (c.42)**

**54.** In section 68(6) of the Local Government and Housing Act 1989 (companies controlled by local authority and arm’s length companies: conditions to be met as regards independence of directors etc), in paragraph (b) for “section 303 of the Companies Act 1985” substitute “section 168 of the Companies Act 2006”.

### **Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))**

**55.** In Article 2(2) of the Insolvency (Northern Ireland) Order 1989 (general interpretation), at the appropriate place insert—

““the Companies Acts” means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Northern Ireland;”.

**56.—**(1) Article 5 of that Order (interpretation for Parts 2 to 7) is amended as follows.

(2) In paragraph (1), in the definition of “a resolution for voluntary winding up”, for “any of the sub-paragraphs” substitute “either of the sub-paragraphs”.

(3) For paragraph (2) substitute—

“(2) Any expression (other than one defined above in this Article)—

- (a) for whose interpretation provision is made by Part 1 of the Companies Order, or
- (b) that is defined for the purposes of the Companies Acts,

has the same meaning in Parts 2 to 7.”.

**57.** In Article 27(4) of that Order (certain powers of company to be exercised with consent of administrator), for “the Companies Order” substitute “the Companies Acts”.

**58.—**(1) Article 70 of that Order (resolutions for voluntary winding up) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (c).

(3) For paragraph (2) substitute—

“(3) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to a resolution under sub-paragraph (a) of paragraph (1) as well as a special resolution under sub-paragraph (b).”.

(4) These amendments apply—

- (a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;
- (b) to resolutions passed at a meeting of which notice is given on or after that date.

**59.** In Article 136 of that Order (powers of High Court to be cumulative) for “the Companies Order” substitute “the Companies Acts”.

**60.**—(1) In Article 140 of that Order (voluntary winding up: powers of liquidator)—

- (a) in paragraph (2)(a) for “extraordinary resolution” substitute “special resolution”; and
- (b) in paragraph (4)(c) for “special or extraordinary resolution” substitute “special resolution”.

(2) These amendments apply—

- (a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;
- (b) to resolutions passed at a meeting of which notice is given on or after that date.

**61.**—(1) Article 158 of that Order (power of liquidator to make payments to provide for employees or former employees on cessation or transfer of business) is amended as follows.

(2) In paragraph (1) (power to act on decision of company made before commencement of winding up) for “Article 668 of the Companies Order” substitute “section 247 of the Companies Act 2006”.

(3) For paragraph (2) (power of liquidator to make provision after winding up has commenced) substitute—

“(2) The liquidator may, after the winding up has commenced, make any such provision as is mentioned in section 247(1) if—

- (a) the company’s liabilities have been fully satisfied and provision has been made for the expenses of the winding up,
- (b) the exercise of the power has been sanctioned by a resolution of the company, and
- (c) any requirements of the company’s memorandum or articles as to the exercise of the power conferred by section 247(1) are complied with.”.

**62.** In Articles 359(3) and 361(4) of that Order (purposes for which company insolvency rules or fees orders may be made), for “the Companies Order” substitute “the Companies Acts”.

**63.** In Article 376 of that Order (judicial notice of court documents), in sub-paragraph (b), for “the Companies Order” substitute “the Companies Acts”.

### **Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))**

**64.** In Article 27(2) of the Companies (Northern Ireland) Order 1990 (eligibility for appointment as company auditor: meaning of “company auditor”), after “Chapter 5 of Part 12 of the 1986 Order” insert “or Chapter 2 of Part 16 of the Companies Act 2006”.

**65.** In Article 55(1) of that Order (eligibility for appointment as auditor: definitions), in the definition of “company” after “Article 392 of the 1986 Order” insert “or section 485 of the Companies Act 2006”.

### **Statutory Water Companies Act 1991 (c.58)**

**66.**—(1) Section 12 of the Statutory Water Companies Act 1991 (registration of statutory water company under Companies Act: adoption of memorandum and articles) is amended as follows.

(2) In subsection (3)(b) for “an extraordinary resolution” substitute “a special resolution”.

(3) In subsection (8)—

- (a) omit the definition of “extraordinary resolution”, and
- (b) in the definition of “special resolution” for “within the meaning of the 1985 Act” substitute “as defined in section 283 of the Companies Act 2006”.

(4) These amendments apply—

- (a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;
- (b) to resolutions passed at a meeting of which notice is given on or after that date.

**67.** In section 13(2) of that Act (review by High Court of resolution substituting memorandum and articles: notice to be given to debenture holders), for paragraph (a) substitute—

“(aa) notice must be given to the holders of debentures entitling the holders to object under this section to a modification of the company’s objects;

(ab) that notice must—

- (i) in the case of a written resolution, be given no later than the last day on which copies of the resolution are sent or submitted to members of the company, and
- (ii) in the case of a resolution to be proposed at a meeting, be the same notice as is given for the purposes of the resolution to members of the company; and”.

### **Social Security Administration Act 1992 (c.5)**

**68.** In section 115B(9) of the Social Security Administration Act 1992 (penalty as alternative to prosecution: colluding employers etc: interpretation), in the definition of “shadow director” for “section 741(2) of the Companies Act 1985” substitute “section 251 of the Companies Act 2006”.

### **Social Security Administration (Northern Ireland) Act 1992 (c.8)**

**69.** In section 109B(9) of the Social Security Administration (Northern Ireland) Act 1992 (penalty as alternative to prosecution: colluding employers etc: interpretation), in the definition of “shadow director” for “Article 9(2) of the Companies (Northern Ireland) Order 1986” substitute “section 251 of the Companies Act 2006”.

### **Taxation of Chargeable Gains Act 1992 (c.12)**

**70.** In Schedule A1 to the Taxation of Chargeable Gains Act 1992 (taper relief), in paragraph 11A(4)(e) (periods of share ownership not to count if company not active: determination whether company active) for “the Companies Act 1985 or the Companies (Northern Ireland) Order 1986” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

### **Friendly Societies Act 1992 (c.40)**

**71.**—(1) In Schedule 10 to the Friendly Societies Act 1992 (application of provisions relating to winding up of companies), omit paragraphs 29 and 59.

(2) These amendments apply—



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- (a) to written resolutions for which the circulation date (see section 290 of the Companies Act 2006) is on or after 1st October 2007;
- (b) to resolutions passed at a meeting of which notice is given on or after that date.

**72.** In Part 2 of Schedule 11 to that Act (committee of management: dealings with members of committee), for paragraph 8 substitute—

“**8.** The provisions of—

- (a) section 217(1) of the Companies Act 2006 (payment for loss of office etc: requirement of members’ approval), and
- (b) section 220(1), (2) and (5) of that Act (exception for payments in discharge of legal obligations etc),

apply to a member of the committee of management of a friendly society or a registered branch as they apply to a director of a company.”.

### **Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)**

**73.** In section 117(4) of the Trade Union and Labour Relations (Consolidation) Act 1974 (special register bodies: auditors), after “Chapter 5 of Part 11 of that Act” insert “or Chapter 2 of Part 16 of the Companies Act 2006”.

**74.** In section 131(2) of that Act (employers’ associations: auditors), after “Chapter 5 of Part 11 of that Act” insert “or Chapter 2 of Part 16 of the Companies Act 2006”.

### **Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))**

**75.** In Article 73(6) of the Electricity (Northern Ireland) Order 1992 (Crown not to be treated as shadow director of successor company), for “the Companies (Northern Ireland) Order 1986” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

### **Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5))**

**76.** In Article 11(9) of the Industrial Relations (Northern Ireland) Order 1992 (rights and duties of auditors of an employers’ association that is a company), in sub-paragraph (b), after “Chapter 5 of Part 12 of that Order” insert “or Chapter 2 of Part 16 of the Companies Act 2006”.

### **Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15))**

**77.**—(1) Article 29 of the Housing (Northern Ireland) Order 1992 (restrictions on exercise of certain powers of registered housing association) is amended as follows.

(2) In paragraph (4) (voluntary winding up of registered housing association), omit “, as defined in Article 386 of the Companies (Northern Ireland) Order 1986,”.

(3) In sub-paragraph (b) of that paragraph, for “Article 388 of the Companies (Northern Ireland) Order 1986” substitute “section 30 of the Companies Act 2006”.

### **Charities Act 1993 (c.10)**

**78.** In section 7 of the Charities Act 1993 (resolution of directors changing of name of company to comply with direction of Charity Commission), for subsection (2) substitute—

“(2) Where a resolution of the directors is passed in accordance with subsection (1), the company must give notice of the change to the registrar of companies.”.



**79.** In section 64 of that Act (alteration of objects of charitable company), in subsection (3) for paragraph (b) substitute—

“(b) is required by section 30 of the Companies Act 2006 (copies of resolutions affecting a company’s constitution) to forward to the registrar a copy of the special resolution effecting the alteration.”.

**80.** In section 68A(3) of that Act (duty of charity’s auditors etc to report matters to Commission)

(a) in subsection (1)(a) after “Chapter 5 of Part 11 of the Companies Act 1985” insert “or Chapter 2 of Part 16 of the Companies Act 2006”, and

(b) in subsection (1)(b) for “that Act” substitute “the Companies Act 1985”.

**81.** In section 69G(4) of that Act (conversion of charitable company into charitable incorporated organisation), at the end of subsection (6) insert—

“(6A) In the case of a company, Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company’s constitution) does not apply to such a resolution.”.

**82.** In paragraph 4(2) of Schedule 5 to that Act (meaning of “connected person”: rules for determining whether a person has a substantial interest in body corporate)—

(a) for “Part 1 of Schedule 13 to the Companies Act 1985” substitute “Schedule 1 to the Companies Act 2006”, and

(b) for “section 364(4)” substitute “section 254”.

### **Leasehold Reform, Housing and Urban Development Act 1993 (c.28)**

**83.** In Schedule 18 to the Leasehold Reform, Housing and Urban Development Act 1993 (finances of the Urban Regeneration Agency), in paragraph 10(2) (qualification for appointment as auditor)—

(a) for “body to which section 384 of the Companies Act 1985 (duty to appoint auditors) applies” substitute “company within the meaning of that Part”, and

(b) for “the Companies Act 1989” substitute “that Act”.

### **Coal Industry Act 1994 (c.21)**

**84.**—(1) The Coal Industry Act 1994 is amended as follows.

(2) After section 65 (interpretation) insert—

#### **“Shadow directors**

**65A.** The Companies Acts (as defined by section 2 of the Companies Act 2006) have effect in relation to a company that—

(a) is wholly owned by the Crown, and

(b) has been notified by the Secretary of State that it is a company to which it is proposed to transfer any part of the Corporation’s undertaking,

as if references to a shadow director did not include the Treasury or any Minister of the Crown.”.

(3) In Schedule 9, omit paragraph 32.

(3) Section 68A is inserted by section 33 of the Charities Act 2006 (c.50), which is not yet in force.

(4) Section 69G is inserted by Part 1 of Schedule 8 to the Charities Act 2006 (c.50), which is not yet in force.

### **Value Added Tax Act 1994 (c.23)**

**85.** In section 18A(4) of the Value Added Tax Act 1994 (fiscal warehousing: matters to be taken into account in considering application), in the closing words for “section 741(2) of the Companies Act 1985” substitute “section 251 of the Companies Act 2006”.

### **Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1))**

**86.** In Article 57(6) of the Airports (Northern Ireland) Order 1994 (Crown not to be treated as shadow director of successor company), for “the Companies Order” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

### **Environment Act 1995 (c.25)**

**87.** In section 46(2)(b) of the Environment Act 1995 (qualification for appointment as auditor of accounts of Environment Agency), for “body to which section 384 of the Companies Act 1985 (duty to appoint auditor) applies” substitute “company within the meaning of that Part”.

### **Housing Act 1996 (c.52)**

**88.**—(1) Schedule 1 to the Housing Act 1996 (registered social landlords) is amended as follows.

(2) In paragraph 7 (power of relevant authority to appoint new director) for sub-paragraph (4) substitute—

“(4) A person appointed under this paragraph is entitled—

- (a) to receive all such communications relating to a written resolution proposed to be agreed to by the company as are required to be supplied to a member of the company;
- (b) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive, and to attend, speak and vote at any such meeting;
- (c) to move a resolution at any general meeting of the company; and
- (d) to require a general meeting of the company to be convened within 21 days of a request to that effect made in writing to the directors of the company.”

(3) In paragraph 11(4) (consent required for change in memorandum or articles: copy of consent to be sent to registrar), for “with any copy of the alterations required to be sent to the registrar of companies under the Companies Act 1985” substitute “with the copy of the resolution making the alterations that is required to be sent to the registrar of companies under section 30 of the Companies Act 2006”.

(4) In paragraph 12(4)(b) (industrial and provident society: consent required for winding up resolution to be forwarded to Financial Services Authority together with copy of resolution), for “the Companies Act 1985” substitute “section 30 of the Companies Act 2006 (as it applies by virtue of section 84(3) of the Insolvency Act 1986 and section 55 of the Industrial and Provident Societies Act 1965)”.

(5) In paragraph 13(6)(b) (company registered as social landlord: consent required for winding up resolution to be forwarded to registrar together with copy of resolution), for “section 380 of the Companies Act 1985” substitute “section 30 of the Companies Act 2006”.

### **Deregulation and Contracting Out (Northern Ireland) Order 1996 (S.I. 1996/1632 (N.I. 11))**

**89.**—(1) Part 1 of Schedule 2 to the Deregulation and Contracting Out (Northern Ireland) Order 1996 is amended as follows.

(2) In paragraph 3 (functions of the registrar of companies conferred by the Companies (Northern Ireland) Order, omit sub-paragraph (d).

(3) After that paragraph, insert—

**“The Companies Act 2006**

**3A.** Functions conferred by or under sections 1085, 1086 or 1091 of the Companies Act 2006, except in so far as they relate to the determination of the means of facilitating the exercise of the right of persons to inspect records kept by the registrar, or the form in which copies of the information contained in those records may be made available.”.

**Commonwealth Development Corporation Act 1999 (c.20)**

**90.** In Schedule 2 to the Commonwealth Development Corporation Act 1999 (modification of Companies Acts in their application to the Corporation), in paragraph 15 (Secretary of State or Treasury not to be regarded as a shadow director or associated company for purposes of certain provisions) for sub-paragraph (2) substitute—

“(2) The provisions are—

- (a) section 288 of the Companies Act 1985 (register of directors);
- (b) section 305 of that Act (directors’ names on correspondence etc);
- (c) section 317 of that Act (disclosure of interests in contracts);
- (d) sections 190 to 196 of the Companies Act 2006 (transactions requiring members’ approval: property transactions); and
- (e) sections 197 to 214 of that Act (transactions requiring members’ approval: loans etc).”.

**Greater London Authority Act 1999 (c.29)**

**91.** In Schedule 18 to the Greater London Authority Act 1999 (the London Transport Users’ Committee), in paragraph 8(5)(b)—

- (a) for “to which section 384 of the Companies Act 1985 applies (duty to appoint auditors)” substitute “within the meaning of that Part”, and
- (b) for “the Companies Act 1989” substitute “that Act”.

**Financial Services and Markets Act 2000 (c.8)**

**92.** In section 195(4)(c) of the Financial Services and Markets Act 2000 (exercise of power in support of overseas regulator: relevant functions) for “the Companies Act 1985” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

**93.—**(1) Section 366 of that Act (insurers carrying out contracts of long-term insurance) is amended as follows.

(2) For subsection (4) substitute—

“(4) A winding up resolution may not be passed—

- (a) as a written resolution (in accordance with Chapter 2 of Part 13 of the Companies Act 2006), or
- (b) at a meeting called in accordance with section 307(4) to (6) or 337(2) of that Act (agreement of members to calling of meeting at short notice).”.

(3) In subsection (5) for “section 380 of the 1985 Act (or Article 388 of the 1986 Order)” substitute “section 30 of the Companies Act 2006”.

#### **Postal Services Act 2000 (c.26)**

**94.**—(1) Section 80 of the Postal Services Act 2000 (shadow directors) is amended as follows.

(2) In subsection (1) omit “of the Companies Act 1985”.

(3) For subsection (2) substitute—

“(2) The provisions are—

- (a) section 288 of the Companies Act 1985 (register of directors);
- (b) section 305 of that Act (directors’ names on correspondence etc);
- (c) section 317 of that Act (disclosure of interests in contracts);
- (d) sections 190 to 196 of the Companies Act 2006 (transactions requiring members’ approval: property transactions); and
- (e) sections 197 to 214 of that Act (transactions requiring members’ approval: loans etc).”.

#### **Transport Act 2000 (c.38)**

**95.** In section 56 of the Transport Act 2000 (shadow directors), for subsections (4) to (7) substitute—

“(4) For the purposes of the provisions listed in subsection (5) none of the persons listed in subsection (8) is to be regarded as a shadow director of the transferee or of a company associated with the transferee at a time while the condition set out in subsection (3) is satisfied.

(5) The provisions are—

- (a) section 288 of the Companies Act 1985 and Article 296 of the Companies (Northern Ireland) Order 1986 (register of directors);
- (b) section 305 of that Act and Article 313 of that Order (directors’ names on correspondence etc);
- (c) section 317 of that Act and Article 325 of that Order (disclosure of interests in contracts);
- (d) sections 190 to 196 of the Companies Act 2006 (transactions requiring members’ approval: property transactions); and
- (e) sections 197 to 214 of that Act (transactions requiring members’ approval: loans etc).”.

#### **Private Security Industry Act 2001 (c.12)**

**96.** In section 25(1) of the Private Security Act 2001 (interpretation), in the definition of “shadow director” for “section 741(2) of the Companies Act 1985” substitute “section 251 of the Companies Act 2006”.

#### **Uncertificated Securities Regulations 2001 (S.I. 2001/3755)**

**97.**—(1) Regulation 16 of the Uncertificated Securities Regulations 2001 (resolution authorising transfer of securities by paperless means) is amended as follows.

(2) For paragraph (7) substitute—

“(7) In the event of default in complying with paragraph (4), an offence is committed by every officer of the issuer who is in default.

(7A) A person guilty of such an offence is liable—

(a) on conviction on indictment, to a fine;

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

(3) After paragraph (8) insert—

“(8A) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company’s constitution) applies to—

(a) a directors’ resolution passed by virtue of paragraph (2), or

(b) a resolution of a company passed by virtue of paragraph (6) preventing or reversing such a resolution.”.

### **Enterprise Act 2002 (c.40)**

**98.** In Schedule 15 to the Enterprise Act 2002 (enactments conferring functions for the purposes of which information may be disclosed)—

(a) omit the entries relating to the Companies Act 1985 and Companies (Northern Ireland) Order 1986, and

(b) at the end add “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

### **Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4))**

**99.** In Article 7(1)(a) of the Company Directors Disqualification (Northern Ireland) Order 2002 (disqualification for fraudulent trading), for “Article 451 of the Companies Order” substitute “section 993 of the Companies Act 2006”.

### **Income Tax (Earnings and Pensions) Act 2003 (c.1)**

**100.** In Part 6 of Schedule 4 to the Income Tax (Earnings and Pensions) Act 2003 (approved CSOP schemes: exchange of share options), in paragraph 26(2) for paragraph (c) substitute—

“(c) becomes bound or entitled to acquire shares in the scheme company under sections 979 to 982 of the Companies Act 2006 (takeover offers: right of offeror to buy out minority shareholder).”.

**101.** In Part 6 of Schedule 5 to that Act (enterprise management incentives: company reorganisations), in paragraph 39(2) for paragraph (c) substitute—

“(c) becomes bound or entitled under sections 979 to 982 of the Companies Act 2006 (takeover offers: right of offeror to buy out minority shareholder) to acquire shares of the same class as shares that are subject to an outstanding qualifying option; or”.

### **RTM Companies (Memorandum and Articles of Association) Regulations 2003 (S.I. 2003/2130)**

**102.**—(1) In Part 2 of Schedule 1 to the RTM Companies (Memorandum and Articles of Association) Regulations, in Article 86 (winding up: powers of liquidator) for “an extraordinary resolution” substitute “a special resolution”.

(2) This amendment does not affect company articles in which Article 86 is incorporated by virtue of having been adopted before 1st October 2007 or by virtue of the operation of section 74(4) of the Commonhold and Leasehold Reform Act 2002 before that date.

### **Horserace Betting and Olympic Lottery Act 2004 (c.25)**

**103.** In section 7 of the Horserace Betting and Olympic Lottery Act 2004 (shadow directors), for “the Companies Act 1985” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

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

**104.** In section 34(3)(c) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (power to apply provisions of 1985 Act or 1986 Order relating to directors’ reports), for “the 1985 Act or the 1986 Order” substitute “the 1985 Act, the 1986 Order or the Companies Act 2006”.

**105.**—(1) Section 37 of that Act (requirements for company to become a community interest company) is amended as follows.

(2) In subsection (1)(b) for “the 1985 Act or the 1986 Order” substitute “the Companies Act 2006”.

(3) For subsection (2) substitute—

“(2) Section 30 of the Companies Act 2006 (copies of resolutions to be forwarded to the registrar of companies) must be complied with in relation to each of the special resolutions at the same time.”.

(4) In subsection (3)(b) for “section 380(1) of the 1985 Act or Article 388(1) of the 1986 Order” substitute “section 30(1) of the Companies Act 2006”.

**106.** In section 43(3) of that Act (auditor’s rights to information) omit the words from “as in relation” to the end.

**107.**—(1) Section 54 of that Act (requirements for company to cease being a community interest company and become a charity or a Scottish charity) is amended as follows.

(2) In subsection (1)(b) for “the 1985 Act of the 1986 Order” substitute “the Companies Act 2006”.

(3) For subsection (2) substitute—

“(2) Section 30 of the Companies Act 2006 (copies of resolutions to be forwarded to the registrar of companies) must be complied with in relation to each of the special resolutions at the same time.”.

(4) In subsection (3)(b) for “section 380(1) of the 1985 Act or Article 388(1) of the 1986 Order” substitute “section 30(1) of the Companies Act 2006”.

### **RTM Companies (Memorandum and Articles of Association) (Wales) Regulations 2004 (S.I. 2004/675)**

**108.**—(1) In Part 2 of Schedule 1 to the RTM Companies (Memorandum and Articles of Association) (Wales) Regulations, in Article 86 (winding up: powers of liquidator) for “an extraordinary resolution” substitute “a special resolution”.

(2) In Part 2 of Schedule 2 to those Regulations (the Welsh language version), in Article 86 for “penderfyniad eithriadol” substitute “penderfyniad arbennig”.

(3) These amendments do not affect company articles in which Article 86 is incorporated by virtue of having been adopted before 1st October 2007 or by virtue of the operation of section 74(4) of the Commonhold and Leasehold Reform Act 2002 before that date.

### **Gambling Act 2005 (c.19)**

**109.** In section 353(1) of the Gambling Act 2005 (general interpretation), for the definition of “director” substitute—

““director”—

- (a) has the meaning given by section 250 of the Companies Act 2006, and
- (b) includes a shadow director within the meaning of section 251 of that Act.”.

### **Charities and Trustee Investment (Scotland) Act 2005 (asp.10)**

**110.** In section 56 of the Charities and Trustee Investment (Scotland) Act 2005(5) (conversion into Scottish charitable incorporated organisation), at the end of subsection (6) insert—

“(6A) In the case of a company which is registered as a company in Scotland, Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company’s constitution) does not apply to the resolutions mentioned in subsection (5)(a) and (b).”.

### **Fraud Act 2006 (c.35)**

**111.**—(1) Section 9 of the Fraud Act 2006 (participating in fraudulent business carried on by sole trader etc) is amended as follows.

(2) In subsection (2)(a) for “section 458 of the Companies Act 1985 or Article 451 of the Companies (Northern Ireland) Order 1986” substitute “section 993 of the Companies Act 2006”.

(3) In subsection (3)—

- (a) in the opening words for “section 458 of the 1985 Act” substitute “that section”, and
- (b) in paragraph (a) for “that Act” substitute “the Companies Act 1985 or the Companies (Northern Ireland) Order 1986”.

(4) Omit subsection (4).

(5) In subsection (5) for “section 458 of the 1985 Act or Article 451 of the 1986 Order” substitute “that section”.

(6) These amendments apply to an offence if any act, omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence occurs on or after 1st October 2007.

### **Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))**

**112.** In Article 271(5) of the Water and Sewerage Services (Northern Ireland) Order 2006 (Crown not to be treated as shadow director of successor company), for “the Companies Order” substitute “the Companies Acts (as defined in section 2 of the Companies Act 2006)”.

## SCHEDULE 5

Article 10(3)

### CONSEQUENTIAL REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Companies Act 1985 (c.5)	Section 455(3).

(5) 2005 asp. 10.



**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Companies Act 2006 (Commencement No. 4 and Commencement No. 3 (Amendment)) Order 2007 No. 2607*

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	In section 456— <ul style="list-style-type: none"> <li>(a) in subsection (2), the words from “and if the order” to the end;</li> <li>(b) in subsection (3)(b), the words “210 or”;</li> <li>(c) in subsection (4), in the second sentence, the words from “(unless” to “section 216”;</li> <li>(d) in subsection (5)(a), the words from “(unless” to “section 216”.</li> </ul>
Companies Consolidation (Consequential Provisions) Act 1985 (c.9)	Sections 14 and 15. <p>In Schedule 2, the entries relating to—</p> <ul style="list-style-type: none"> <li>(a) section 53(1) of the Industrial and Provident Societies Act 1965;</li> <li>(b) the Atomic Energy Authority Act 1971;</li> <li>(c) section 3 of the Industry Act 1980;</li> <li>(d) the Food Act 1984.</li> </ul>
Insolvency Act 1986 (c.45)	Section 84(1)(c).
Building Societies Act 1986 (c.53)	In Schedule 15, paragraphs 26 and 53.
Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))	In Part 1 of Schedule 2, the entries relating to— <ul style="list-style-type: none"> <li>(a) section 62(1) of the Industrial and Provident Societies Act (Northern Ireland) 1969;</li> <li>(b) Article 13(2) of the Industrial Development (Northern Ireland) Order 1982.</li> </ul> <p>In Part 2 of Schedule 2, the entry relating to the Judicature (Northern Ireland) Act 1978.</p>
Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18))	Articles 26 to 35. <p>Part 1 of Schedule 4.</p> <p>In Part 2 of Schedule 4, paragraphs 6, 7, 9, 12 and 13.</p>
Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))	Article 70(1)(c).
Statutory Water Companies Act 1991 (c.58)	In section 12(8), the definition of “extraordinary resolution”.
Friendly Societies Act 1992 (c.40)	In Schedule 10, paragraphs 29 and 59.



<i>Short title and chapter</i>	<i>Extent of repeal</i>
Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15))	In Article 29(4), the words “, as defined in Article 386 of the Companies (Northern Ireland) Order 1986,”.
Coal Industry Act 1994 (c.21)	In Schedule 9, paragraph 32.
Deregulation and Contracting Out (Northern Ireland) Order 1996 (S.I. 1996/1632 (N.I. 11))	In Part 1 of Schedule 2, paragraph 3(d).
Deregulation (Northern Ireland) Order 1997 (S.I. 1997/2984 (N.I. 18))	Article 5(3) to (5).
Postal Services Act 2000 (c.26)	In section 80(1), the words “of the Companies Act 1985”.
Enterprise Act 2002 (c.40)	In Schedule 15, the entries relating to—  (a) the Companies Act 1985; and  (b) the Companies (Northern Ireland) Order 1986.
Audit, Investigations and Companies (Community Enterprise Act 2004 (c.27)	In section 43(3), the words from “as in relation” to the end.
Civil Partnership Act 2004 (c.33)	In Schedule 29, paragraph 73.
Fraud Act 2006 (c.35)	Section 9(4).