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## SCHEDULES

### SCHEDULE 1

Section 4(2).

#### FORM AND CONTENT OF COMPANY ACCOUNTS

- 1 Schedule 4 to the <sup>M1</sup>Companies Act 1985 (form and content of company accounts) is amended as follows.

#### Marginal Citations

**M1** 1985 c. 6.

#### *Group undertakings*

- 2 (1) For “group companies”, wherever occurring, substitute “group undertakings”.
- (2) That expression occurs—
- (a) in Balance Sheet Format 1, in Items B.III.1 and 2, C.II.2, C.III.1, E.6 and H.6;
  - (b) in Balance Sheet Format 2—
    - (i) under the heading “ASSETS”, in Items B.III.1 and 2, C.II.2 and C.III.1;
    - (ii) under the heading “LIABILITIES”, in Item C.6;
  - (c) in the Profit and Loss Accounts Formats—
    - (i) in Format 1, Item 7;
    - (ii) in Format 2, Item 9;
    - (iii) in Format 3, Item B.3;
    - (iv) in Format 4, Item B.5;
  - (d) in Notes (15) and (16) to the profit and loss account formats; and
  - (e) in the second sentence of paragraph 53(2) (exclusion from requirement to state separately certain loans).

#### *Participating interests*

- 3 (1) For “shares in related companies”, wherever occurring, substitute “participating interests”.
- (2) That expression occurs—
- (a) in Balance Sheet Format 1, Item B.III.3;
  - (b) in Balance Sheet Format 2, under the heading “ASSETS”, in Item B.III.3;

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- (c) in the Profit and Loss Accounts Formats—
- (i) in Format 1, Item 8;
  - (ii) in Format 2, Item 10;
  - (iii) in Format 3, Item B.4;
  - (iv) in Format 4, Item B.6.
- 4 (1) For “related companies”, wherever occurring in any other context, substitute “undertakings in which the company has a participating interest”.
- (2) Those contexts are—
- (a) in Balance Sheet Format 1, in Items B.III.4, C.II.3, E.7 and H.7;
  - (b) in Balance Sheet Format 2—
    - (i) under the heading “ASSETS”, in Items B.III.4 and C.II.3;
    - (ii) under the heading “LIABILITIES”, in Item C.7.

*Consistency of accounting policies*

- 5 For paragraph 11 (consistency of accounting policy from one year to the next) substitute—
- “11 Accounting policies shall be applied consistently within the same accounts and from one financial year to the next.”.

*Revaluation reserve*

- 6 In paragraph 34 (revaluation reserve), for sub-paragraph (3) (circumstances in which reduction of reserve required or permitted) substitute—
- “(3) An amount may be transferred from the revaluation reserve—
- (a) to the profit and loss account, if the amount was previously charged to that account or represents realised profit, or
  - (b) on capitalisation;
- and the revaluation reserve shall be reduced to the extent that the amounts transferred to it are no longer necessary for the purposes of the valuation method used.
- (3A) In sub-paragraph (3)(b) “capitalisation”, in relation to an amount standing to the credit of the revaluation reserve, means applying it in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid shares.
- (3B) The revaluation reserve shall not be reduced except as mentioned in this paragraph.”.

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*Compliance with accounting standards*

7 After paragraph 36 (disclosure of accounting policies) insert—

“36A It shall be stated whether the accounts have been prepared in accordance with applicable accounting standards and particulars of any material departure from those standards and the reasons for it shall be given.”.

*Provision for taxation*

8 For paragraph 47 (provision for taxation) substitute—

“47 The amount of any provision for deferred taxation shall be stated separately from the amount of any provision for other taxation.”.

*Loans in connection with assistance for purchase of company’s own shares*

9 In paragraph 51(2) (disclosure of outstanding loans in connection with certain cases of financial assistance for purchase of company’s own shares), after “153(4)(b)” insert “, (bb)”.

*Obligation to show corresponding amounts for previous financial year*

10 In paragraph 58(3) (exceptions from obligation to show corresponding amount for previous financial year), for paragraphs (a) to (c) substitute—

- “(a) paragraph 13 of Schedule 4A (details of accounting treatment of acquisitions),
- (b) paragraphs 2, 8(3), 16, 21(1)(d), 22(4) and (5), 24(3) and (4) and 27(3) and (4) of Schedule 5 (shareholdings in other undertakings),
- (c) Parts II and III of Schedule 6 (loans and other dealings in favour of directors and others), and
- (d) paragraphs 42 and 46 above (fixed assets and reserves and provisions).”.

*Special provisions where company is parent company or subsidiary undertaking*

11 (1) For the heading to Part IV (special provisions where the company is a holding or subsidiary company) substitute—

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## “PART IV

### SPECIAL PROVISIONS WHERE COMPANY IS A PARENT COMPANY OR SUBSIDIARY UNDERTAKING”.

(2) In that Part for paragraph 59 substitute—

#### **Dealings with or interests in group undertakings**

“59 Where a company is a parent company or a subsidiary undertaking and any item required by Part I of this Schedule to be shown in the company’s balance sheet in relation to group undertakings includes—

- (a) amounts attributable to dealings with or interests in any parent undertaking or fellow subsidiary undertaking, or
- (b) amounts attributable to dealings with or interests in any subsidiary undertaking of the company,

the aggregate amounts within paragraphs (a) and (b) respectively shall be shown as separate items, either by way of subdivision of the relevant item in the balance sheet or in a note to the company’s accounts.”.

(3) After that paragraph insert—

#### **Guarantees and other financial commitments in favour of group undertakings**

“59A Commitments within any of sub-paragraphs (1) to (5) of paragraph 50 (guarantees and other financial commitments) which are undertaken on behalf of or for the benefit of—

- (a) any parent undertaking or fellow subsidiary undertaking, or
- (b) any subsidiary undertaking of the company,

shall be stated separately from the other commitments within that sub-paragraph, and commitments within paragraph (a) shall also be stated separately from those within paragraph (b).”.

## SCHEDULE 2

Section 5(2).

### [SCHEDULE 4A TO THE COMPANIES ACT 1985] FORM AND CONTENT OF GROUP ACCOUNTS

#### *General rules*

- 1 (1) Group accounts shall comply so far as practicable with the provisions of Schedule 4 as if the undertakings included in the consolidation (“the group”) were a single company.
- (2) In particular, for the purposes of paragraph 59 of that Schedule (dealings with or interests in group undertakings) as it applies to group accounts—

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- (a) any subsidiary undertakings of the parent company not included in the consolidation shall be treated as subsidiary undertakings of the group, and
    - (b) if the parent company is itself a subsidiary undertaking, the group shall be treated as a subsidiary undertaking of any parent undertaking of that company, and the reference to fellow-subsi-dary undertakings shall be construed accordingly.
  - (3) Where the parent company is treated as an investment company for the purposes of Part V of that Schedule (special provisions for investment companies) the group shall be similarly treated.
- 2
  - (1) The consolidated balance sheet and profit and loss account shall incorporate in full the information contained in the individual accounts of the undertakings included in the consolidation, subject to the adjustments authorised or required by the following provisions of this Schedule and to such other adjustments (if any) as may be appropriate in accordance with generally accepted accounting principles or practice.
  - (2) If the financial year of a subsidiary undertaking included in the consolidation differs from that of the parent company, the group accounts shall be made up—
    - (a) from the accounts of the subsidiary undertaking for its financial year last ending before the end of the parent company’s financial year, provided that year ended no more than three months before that of the parent company, or
    - (b) from interim accounts prepared by the subsidiary undertaking as at the end of the parent company’s financial year.
- 3
  - (1) Where assets and liabilities to be included in the group accounts have been valued or otherwise determined by undertakings according to accounting rules differing from those used for the group accounts, the values or amounts shall be adjusted so as to accord with the rules used for the group accounts.
  - (2) If it appears to the directors of the parent company that there are special reasons for departing from sub-paragraph (1) they may do so, but particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.
  - (3) The adjustments referred to in this paragraph need not be made if they are not material for the purpose of giving a true and fair view.
- 4 Any differences of accounting rules as between a parent company’s individual accounts for a financial year and its group accounts shall be disclosed in a note to the latter accounts and the reasons for the difference given.
- 5 Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

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### *Elimination of group transactions*

- 6 (1) Debts and claims between undertakings included in the consolidation, and income and expenditure relating to transactions between such undertakings, shall be eliminated in preparing the group accounts.
- (2) Where profits and losses resulting from transactions between undertakings included in the consolidation are included in the book value of assets, they shall be eliminated in preparing the group accounts.
- (3) The elimination required by sub-paragraph (2) may be effected in proportion to the group's interest in the shares of the undertakings.
- (4) Sub-paragraphs (1) and (2) need not be complied with if the amounts concerned are not material for the purpose of giving a true and fair view.

### *Acquisition and merger accounting*

- 7 (1) The following provisions apply where an undertaking becomes a subsidiary undertaking of the parent company.
- (2) That event is referred to in those provisions as an "acquisition", and references to the "undertaking acquired" shall be construed accordingly.

8 An acquisition shall be accounted for by the acquisition method of accounting unless the conditions for accounting for it as a merger are met and the merger method of accounting is adopted.

- 9 (1) The acquisition method of accounting is as follows.
- (2) The identifiable assets and liabilities of the undertaking acquired shall be included in the consolidated balance sheet at their fair values as at the date of acquisition.
- In this paragraph the "identifiable" assets or liabilities of the undertaking acquired means the assets or liabilities which are capable of being disposed of or discharged separately, without disposing of a business of the undertaking.
- (3) The income and expenditure of the undertaking acquired shall be brought into the group accounts only as from the date of the acquisition.
- (4) There shall be set off against the acquisition cost of the interest in the shares of the undertaking held by the parent company and its subsidiary undertakings the interest of the parent company and its subsidiary undertakings in the adjusted capital and reserves of the undertaking acquired.

For this purpose—

"the acquisition cost" means the amount of any cash consideration and the fair value of any other consideration, together with such amount (if any) in respect of fees and other expenses of the acquisition as the company may determine, and

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“the adjusted capital and reserves” of the undertaking acquired means its capital and reserves at the date of the acquisition after adjusting the identifiable assets and liabilities of the undertaking to fair values as at that date.

- (5) The resulting amount if positive shall be treated as goodwill, and if negative as a negative consolidation difference.
- 10 (1) The conditions for accounting for an acquisition as a merger are—
- (a) that at least 90 per cent. of the nominal value of the relevant shares in the undertaking acquired is held by or on behalf of the parent company and its subsidiary undertakings,
  - (b) that the proportion referred to in paragraph (a) was attained pursuant to an arrangement providing for the issue of equity shares by the parent company or one or more of its subsidiary undertakings,
  - (c) that the fair value of any consideration other than the issue of equity shares given pursuant to the arrangement by the parent company and its subsidiary undertakings did not exceed 10 per cent. of the nominal value of the equity shares issued, and
  - (d) that adoption of the merger method of accounting accords with generally accepted accounting principles or practice.
- (2) The reference in sub-paragraph (1)(a) to the “relevant shares” in an undertaking acquired is to those carrying unrestricted rights to participate both in distributions and in the assets of the undertaking upon liquidation.
- 11 (1) The merger method of accounting is as follows.
- (2) The assets and liabilities of the undertaking acquired shall be brought into the group accounts at the figures at which they stand in the undertaking’s accounts, subject to any adjustment authorised or required by this Schedule.
  - (3) The income and expenditure of the undertaking acquired shall be included in the group accounts for the entire financial year, including the period before the acquisition.
  - (4) The group accounts shall show corresponding amounts relating to the previous financial year as if the undertaking acquired had been included in the consolidation throughout that year.
  - (5) There shall be set off against the aggregate of—
    - (a) the appropriate amount in respect of qualifying shares issued by the parent company or its subsidiary undertakings in consideration for the acquisition of shares in the undertaking acquired, and
    - (b) the fair value of any other consideration for the acquisition of shares in the undertaking acquired, determined as at the date when those shares were acquired,the nominal value of the issued share capital of the undertaking acquired held by the parent company and its subsidiary undertakings.
  - (6) The resulting amount shall be shown as an adjustment to the consolidated reserves.

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- (7) In sub-paragraph (5)(a) “qualifying shares” means—
- (a) shares in relation to which section 131 (merger relief) applies, in respect of which the appropriate amount is the nominal value; or
  - (b) shares in relation to which section 132 (relief in respect of group reconstructions) applies, in respect of which the appropriate amount is the nominal value together with any minimum premium value within the meaning of that section.
- 12 (1) Where a group is acquired, paragraphs 9 to 11 apply with the following adaptations.
- (2) References to shares of the undertaking acquired shall be construed as references to shares of the parent undertaking of the group.
  - (3) Other references to the undertaking acquired shall be construed as references to the group; and references to the assets and liabilities, income and expenditure and capital and reserves of the undertaking acquired shall be construed as references to the assets and liabilities, income and expenditure and capital and reserves of the group after making the set-offs and other adjustments required by this Schedule in the case of group accounts.
- 13 (1) The following information with respect to acquisitions taking place in the financial year shall be given in a note to the accounts.
- (2) There shall be stated—
    - (a) the name of the undertaking acquired or, where a group was acquired, the name of the parent undertaking of that group, and
    - (b) whether the acquisition has been accounted for by the acquisition or the merger method of accounting;and in relation to an acquisition which significantly affects the figures shown in the group accounts, the following further information shall be given.
  - (3) The composition and fair value of the consideration for the acquisition given by the parent company and its subsidiary undertakings shall be stated.
  - (4) The profit or loss of the undertaking or group acquired shall be stated—
    - (a) for the period from the beginning of the financial year of the undertaking or, as the case may be, of the parent undertaking of the group, up to the date of the acquisition, and
    - (b) for the previous financial year of that undertaking or parent undertaking;and there shall also be stated the date on which the financial year referred to in paragraph (a) began.
  - (5) Where the acquisition method of accounting has been adopted, the book values immediately prior to the acquisition, and the fair values at the date of acquisition, of each class of assets and liabilities of the undertaking or group acquired shall be stated in tabular form, including a statement of the amount of any goodwill or negative consolidation difference arising on the acquisition, together with an explanation of any significant adjustments made.
  - (6) Where the merger method of accounting has been adopted, an explanation shall be given of any significant adjustments made in relation to the amounts of the assets



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and liabilities of the undertaking or group acquired, together with a statement of any resulting adjustment to the consolidated reserves (including the re-statement of opening consolidated reserves).

- (7) In ascertaining for the purposes of sub-paragraph (4), (5) or (6) the profit or loss of a group, the book values and fair values of assets and liabilities of a group or the amount of the assets and liabilities of a group, the set-offs and other adjustments required by this Schedule in the case of group accounts shall be made.
- 14 (1) There shall also be stated in a note to the accounts the cumulative amount of goodwill resulting from acquisitions in that and earlier financial years which has been written off.
- (2) That figure shall be shown net of any goodwill attributable to subsidiary undertakings or businesses disposed of prior to the balance sheet date.
- 15 Where during the financial year there has been a disposal of an undertaking or group which significantly affects the figures shown in the group accounts, there shall be stated in a note to the accounts—
- (a) the name of that undertaking or, as the case may be, of the parent undertaking of that group, and
- (b) the extent to which the profit or loss shown in the group accounts is attributable to profit or loss of that undertaking or group.
- 16 The information required by paragraph 13, 14 or 15 above need not be disclosed with respect to an undertaking which—
- (a) is established under the law of a country outside the United Kingdom, or
- (b) carries on business outside the United Kingdom,
- if in the opinion of the directors of the parent company the disclosure would be seriously prejudicial to the business of that undertaking or to the business of the parent company or any of its subsidiary undertakings and the Secretary of State agrees that the information should not be disclosed.

#### *Minority interests*

- 17 (1) The formats set out in Schedule 4 have effect in relation to group accounts with the following additions.
- (2) In the Balance Sheet Formats a further item headed “Minority interests” shall be added—
- (a) in Format 1, either after item J or at the end (after item K), and
- (b) in Format 2, under the general heading “LIABILITIES”, between items A and B;

and under that item shall be shown the amount of capital and reserves attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.

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- (3) In the Profit and Loss Account Formats a further item headed “Minority interests” shall be added—
- (a) in Format 1, between items 14 and 15,
  - (b) in Format 2, between items 16 and 17,
  - (c) in Format 3, between items 7 and 8 in both sections A and B, and
  - (d) in Format 4, between items 9 and 10 in both sections A and B;
- and under that item shall be shown the amount of any profit or loss on ordinary activities attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.
- (4) In the Profit and Loss Account Formats a further item headed “Minority interests” shall be added—
- (a) in Format 1, between items 18 and 19,
  - (b) in Format 2, between items 20 and 21,
  - (c) in Format 3, between items 9 and 10 in section A and between items 8 and 9 in section B, and
  - (d) in Format 4, between items 11 and 12 in section A and between items 10 and 11 in section B;
- and under that item shall be shown the amount of any profit or loss on extraordinary activities attributable to shares in subsidiary undertakings included in the consolidation held by or on behalf of persons other than the parent company and its subsidiary undertakings.
- (5) For the purposes of paragraph 3(3) and (4) of Schedule 4 (power to adapt or combine items)—
- (a) the additional item required by sub-paragraph (2) above shall be treated as one to which a letter is assigned, and
  - (b) the additional items required by sub-paragraphs (3) and (4) above shall be treated as ones to which an Arabic number is assigned.

*Interests in subsidiary undertakings excluded from consolidation*

- 18 The interest of the group in subsidiary undertakings excluded from consolidation under section 229(4) (undertakings with activities different from those of undertakings included in the consolidation), and the amount of profit or loss attributable to such an interest, shall be shown in the consolidated balance sheet or, as the case may be, in the consolidated profit and loss account by the equity method of accounting (including dealing with any goodwill arising in accordance with paragraphs 17 to 19 and 21 of Schedule 4).

*Joint ventures*

- 19 (1) Where an undertaking included in the consolidation manages another undertaking jointly with one or more undertakings not included in the consolidation, that other undertaking (“the joint venture”) may, if it is not—
- (a) a body corporate, or

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(b) a subsidiary undertaking of the parent company,  
be dealt with in the group accounts by the method of proportional consolidation.

- (2) The provisions of this Part relating to the preparation of consolidated accounts apply, with any necessary modifications, to proportional consolidation under this paragraph.

#### *Associated undertakings*

- 20 (1) An “associated undertaking” means an undertaking in which an undertaking included in the consolidation has a participating interest and over whose operating and financial policy it exercises a significant influence, and which is not—
- (a) a subsidiary undertaking of the parent company, or
  - (b) a joint venture dealt with in accordance with paragraph 19.
- (2) Where an undertaking holds 20 per cent. or more of the voting rights in another undertaking, it shall be presumed to exercise such an influence over it unless the contrary is shown.
- (3) The voting rights in an undertaking means the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.
- (4) The provisions of paragraphs 5 to 11 of Schedule 10A (rights to be taken into account and attribution of rights) apply in determining for the purposes of this paragraph whether an undertaking holds 20 per cent. or more of the voting rights in another undertaking.
- 21 (1) The formats set out in Schedule 4 have effect in relation to group accounts with the following modifications.
- (2) In the Balance Sheet Formats the items headed “Participating interests”, that is—
- (a) in Format 1, item B.III.3, and
  - (b) In Format 2, item B.III.3 under the heading “ASSETS”,
- shall be replaced by two items, “Interests in associated undertakings” and “Other participating interests”.
- (3) In the Profit and Loss Account Formats, the items headed “Income from participating interests”, that is—
- (a) in Format 1, item 8,
  - (b) in Format 2, item 10,
  - (c) in Format 3, item B.4, and
  - (d) in Format 4, item B.6,
- shall be replaced by two items, “Income from interests in associated undertakings” and “Income from other participating interests”.
- 22 (1) The interest of an undertaking in an associated undertaking, and the amount of profit or loss attributable to such an interest, shall be shown by the equity method

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of accounting (including dealing with any goodwill arising in accordance with paragraphs 17 to 19 and 21 of Schedule 4).

- (2) Where the associated undertaking is itself a parent undertaking, the net assets and profits or losses to be taken into account are those of the parent and its subsidiary undertakings (after making any consolidation adjustments).
- (3) The equity method of accounting need not be applied if the amounts in question are not material for the purpose of giving a true and fair view.

## SCHEDULE 3

Section 6(2).

### [SCHEDULE 5 TO THE COMPANIES ACT 1985] DISCLOSURE OF INFORMATION: RELATED UNDERTAKINGS

#### PART I

#### COMPANIES NOT REQUIRED TO PREPARE GROUP ACCOUNTS

##### *Subsidiary undertakings*

- 1 (1) The following information shall be given where at the end of the financial year the company has subsidiary undertakings.
  - (2) The name of each subsidiary undertaking shall be stated.
  - (3) There shall be stated with respect to each subsidiary undertaking—
    - (a) if it is incorporated outside Great Britain, the country in which it is incorporated;
    - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland;
    - (c) if it is unincorporated, the address of its principal place of business.
  - (4) The reason why the company is not required to prepare group accounts shall be stated.
  - (5) If the reason is that all the subsidiary undertakings of the company fall within the exclusions provided for in section 229, it shall be stated with respect to each subsidiary undertaking which of those exclusions applies.

##### *Holdings in subsidiary undertakings*

- 2 (1) There shall be stated in relation to shares of each class held by the company in a subsidiary undertaking—
  - (a) the identity of the class, and
  - (b) the proportion of the nominal value of the shares of that class represented by those shares.

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- (2) The shares held by or on behalf of the company itself shall be distinguished from those attributed to the company which are held by or on behalf of a subsidiary undertaking.

*Financial information about subsidiary undertakings*

- 3 (1) There shall be disclosed with respect to each subsidiary undertaking—
- (a) the aggregate amount of its capital and reserves as at the end of its relevant financial year, and
  - (b) its profit or loss for that year.
- (2) That information need not be given if the company is exempt by virtue of section 228 from the requirement to prepare group accounts (parent company included in accounts of larger group).
- (3) That information need not be given if—
- (a) the subsidiary undertaking is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Great Britain or elsewhere, and
  - (b) the company's holding is less than 50 per cent. of the nominal value of the shares in the undertaking.
- (4) Information otherwise required by this paragraph need not be given if it is not material.
- (5) For the purposes of this paragraph the “relevant financial year” of a subsidiary undertaking is—
- (a) if its financial year ends with that of the company, that year, and
  - (b) if not, its financial year ending last before the end of the company's financial year.

*Financial years of subsidiary undertakings*

- 4 Where the financial year of one or more subsidiary undertakings did not end with that of the company, there shall be stated in relation to each such undertaking—
- (a) the reasons why the company's directors consider that its financial year should not end with that of the company, and
  - (b) the date on which its last financial year ended (last before the end of the company's financial year).

Instead of the dates required by paragraph (b) being given for each subsidiary undertaking the earliest and latest of those dates may be given.

*Further information about subsidiary undertakings*

- 5 (1) There shall be disclosed—

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- (a) any qualifications contained in the auditors' reports on the accounts of subsidiary undertakings for financial years ending with or during the financial year of the company, and
- (b) any note or saving contained in such accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification,

in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members.

- (2) The aggregate amount of the total investment of the company in the shares of subsidiary undertakings shall be stated by way of the equity method of valuation, unless—
  - (a) the company is exempt from the requirement to prepare group accounts by virtue of section 228 (parent company included in accounts of larger group), and
  - (b) the directors state their opinion that the aggregate value of the assets of the company consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiary undertakings is not less than the aggregate of the amounts at which those assets are stated or included in the company's balance sheet.
- (3) In so far as information required by this paragraph is not obtainable, a statement to that effect shall be given instead.

*Shares and debentures of company held by subsidiary undertakings*

- 6 (1) The number, description and amount of the shares in and debentures of the company held by or on behalf of its subsidiary undertakings shall be disclosed.
- (2) Sub-paragraph (1) does not apply in relation to shares or debentures in the case of which the subsidiary undertaking is concerned as personal representative or, subject as follows, as trustee.
- (3) The exception for shares or debentures in relation to which the subsidiary undertaking is concerned as trustee does not apply if the company, or any subsidiary undertaking of the company, is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.
- (4) Schedule 2 to this Act has effect for the interpretation of the reference in sub-paragraph (3) to a beneficial interest under a trust.

*Significant holdings in undertakings other than subsidiary undertakings*

- 7 (1) The information required by paragraphs 8 and 9 shall be given where at the end of the financial year the company has a significant holding in an undertaking which is not a subsidiary undertaking of the company.
- (2) A holding is significant for this purpose if—
  - (a) it amounts to 10 per cent. or more of the nominal value of any class of shares in the undertaking, or

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- (b) the amount of the holding (as stated or included in the company's accounts) exceeds one-tenth of the amount (as so stated) of the company's assets.
- 8 (1) The name of the undertaking shall be stated.
- (2) There shall be stated—
- (a) if the undertaking is incorporated outside Great Britain, the country in which it is incorporated;
  - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland;
  - (c) if it is unincorporated, the address of its principal place of business.
- (3) There shall also be stated—
- (a) the identity of each class of shares in the undertaking held by the company, and
  - (b) the proportion of the nominal value of the shares of that class represented by those shares.
- 9 (1) Where the company has a significant holding in an undertaking amounting to 20 per cent. or more of the nominal value of the shares in the undertaking, there shall also be stated—
- (a) the aggregate amount of the capital and reserves of the undertaking as at the end of its relevant financial year, and
  - (b) its profit or loss for that year.
- (2) That information need not be given if—
- (a) the company is exempt by virtue of section 228 from the requirement to prepare group accounts (parent company included in accounts of larger group), and
  - (b) the investment of the company in all undertakings in which it has such a holding as is mentioned in sub-paragraph (1) is shown, in aggregate, in the notes to the accounts by way of the equity method of valuation.
- (3) That information need not be given in respect of an undertaking if—
- (a) the undertaking is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Great Britain or elsewhere, and
  - (b) the company's holding is less than 50 per cent. of the nominal value of the shares in the undertaking.
- (4) Information otherwise required by this paragraph need not be given if it is not material.
- (5) For the purposes of this paragraph the “relevant financial year” of an undertaking is—
- (a) if its financial year ends with that of the company, that year, and
  - (b) if not, its financial year ending last before the end of the company's financial year.

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*Arrangements attracting merger relief*

- 10 (1) This paragraph applies to arrangements attracting merger relief, that is, where a company allots shares in consideration for the issue, transfer or cancellation of shares in another body corporate (“the other company”) in circumstances such that section 130 of this Act (share premium account) does not, by virtue of section 131(2) (merger relief), apply to the premiums on the shares.
- (2) If the company makes such an arrangement during the financial year, the following information shall be given—
- (a) the name of the other company,
  - (b) the number, nominal value and class of shares allotted,
  - (c) the number, nominal value and class of shares in the other company issued, transferred or cancelled, and
  - (d) particulars of the accounting treatment adopted in the company’s accounts in respect of the issue, transfer or cancellation.
- (3) Where the company made such an arrangement during the financial year, or during either of the two preceding financial years, and there is included in the company’s profit and loss account—
- (a) any profit or loss realised during the financial year by the company on the disposal of—
    - (i) any shares in the other company, or
    - (ii) any assets which were fixed assets of the other company or any of its subsidiary undertakings at the time of the arrangement, or
  - (b) any part of any profit or loss realised during the financial year by the company on the disposal of any shares (other than shares in the other company) which was attributable to the fact that there were at the time of the disposal amongst the assets of the company which issued the shares, or any of its subsidiary undertakings, such shares or assets as are described in paragraph (a) above,
- then, the net amount of that profit or loss or, as the case may be, the part so attributable shall be shown, together with an explanation of the transactions to which the information relates.
- (4) For the purposes of this paragraph the time of the arrangement shall be taken to be—
- (a) where as a result of the arrangement the other company becomes a subsidiary undertaking of the company, the date on which it does so or, if the arrangement in question becomes binding only on the fulfilment of a condition, the date on which that condition is fulfilled;
  - (b) if the other company is already a subsidiary undertaking of the company, the date on which the shares are allotted or, if they are allotted on different days, the first day.

*Parent undertaking drawing up accounts for larger group*

- 11 (1) Where the company is a subsidiary undertaking, the following information shall be given with respect to the parent undertaking of—



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- (a) the largest group of undertakings for which group accounts are drawn up and of which the company is a member, and
  - (b) the smallest such group of undertakings.
- (2) The name of the parent undertaking shall be stated.
- (3) There shall be stated—
- (a) if the undertaking is incorporated outside Great Britain, the country in which it is incorporated;
  - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland;
  - (c) if it is unincorporated, the address of its principal place of business.
- (4) If copies of the group accounts referred to in sub-paragraph (1) are available to the public, there shall also be stated the addresses from which copies of the accounts can be obtained.

*Identification of ultimate parent company*

- 12 (1) Where the company is a subsidiary undertaking, the following information shall be given with respect to the company (if any) regarded by the directors as being the company's ultimate parent company.
- (2) The name of that company shall be stated.
- (3) If known to the directors, there shall be stated—
- (a) if that company is incorporated outside Great Britain, the country in which it is incorporated;
  - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland.
- (4) In this paragraph “company” includes any body corporate.

*Constructions of references to shares held by company*

- 13 (1) References in this Part of this Schedule to shares held by a company shall be construed as follows.
- (2) For the purposes of paragraphs 2 to 5 (information about subsidiary undertakings)—
- (a) there shall be attributed to the company any shares held by a subsidiary undertaking, or by a person acting on behalf of the company or a subsidiary undertaking; but
  - (b) there shall be treated as not held by the company any shares held on behalf of a person other than the company or a subsidiary undertaking.
- (3) For the purposes of paragraphs 7 to 9 (information about undertakings other than subsidiary undertakings)—
- (a) there shall be attributed to the company shares held on its behalf by any person; but
  - (b) there shall be treated as not held by a company shares held on behalf of a person other than the company.

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

## PART II

### COMPANIES REQUIRED TO PREPARE GROUP ACCOUNTS

#### *Introductory*

- 14 In this Part of this Schedule “the group” means the group consisting of the parent company and its subsidiary undertakings.

#### *Subsidiary undertakings*

- 15 (1) The following information shall be given with respect to the undertakings which are subsidiary undertakings of the parent company at the end of the financial year.
- (2) The name of each undertaking shall be stated.
- (3) There shall be stated—
- (a) if the undertaking is incorporated outside Great Britain, the country in which it is incorporated;
  - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland;
  - (c) if it is unincorporated, the address of its principal place of business.
- (4) It shall also be stated whether the subsidiary undertaking is included in the consolidation and, if it is not, the reasons for excluding it from consolidation shall be given.
- (5) It shall be stated with respect to each subsidiary undertaking by virtue of which of the conditions specified in section 258(2) or (4) it is a subsidiary undertaking of its immediate parent undertaking.

That information need not be given if the relevant condition is that specified in subsection (2)(a) of that section (holding of a majority of the voting rights) and the immediate parent undertaking holds the same proportion of the shares in the undertaking as it holds voting rights.

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### *Holdings in subsidiary undertakings*

- 16 (1) The following information shall be given with respect to the shares of a subsidiary undertaking held—
- (a) by the parent company, and
  - (b) by the group;
- and the information under paragraphs (a) and (b) shall (if different) be shown separately.
- (2) There shall be stated—
- (a) the identity of each class of shares held, and
  - (b) the proportion of the nominal value of the shares of that class represented by those shares.

### *Financial information about subsidiary undertakings not included in the consolidation*

- 17 (1) There shall be shown with respect to each subsidiary undertaking not included in the consolidation—
- (a) the aggregate amount of its capital and reserves as at the end of its relevant financial year, and
  - (b) its profit or loss for that year.
- (2) That information need not be given if the group's investment in the undertaking is included in the accounts by way of the equity method of valuation or if—
- (a) the undertaking is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Great Britain or elsewhere, and
  - (b) the holding of the group is less than 50 per cent. of the nominal value of the shares in the undertaking.
- (3) Information otherwise required by this paragraph need not be given if it is not material.
- (4) For the purposes of this paragraph the “relevant financial year” of a subsidiary undertaking is—
- (a) if its financial year ends with that of the company, that year, and
  - (b) if not, its financial year ending last before the end of the company's financial year.

### *Further information about subsidiary undertakings excluded from consolidation*

- 18 (1) The following information shall be given with respect to subsidiary undertakings excluded from consolidation.
- (2) There shall be disclosed—
- (a) any qualifications contained in the auditors' reports on the accounts of the undertaking for financial years ending with or during the financial year of the company, and

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- (b) any note or saving contained in such accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification,  
in so far as the matter which is the subject of the qualification or note is not covered by the consolidated accounts and is material from the point of view of the members of the parent company.
- (3) In so far as information required by this paragraph is not obtainable, a statement to that effect shall be given instead.

*Financial years of subsidiary undertakings*

- 19 Where the financial year of one or more subsidiary undertakings did not end with that of the company, there shall be stated in relation to each such undertaking—
- (a) the reasons why the company's directors consider that its financial year should not end with that of the company, and
  - (b) the date on which its last financial year ended (last before the end of the company's financial year).

Instead of the dates required by paragraph (b) being given for each subsidiary undertaking the earliest and latest of those dates may be given.

*Shares and debentures of company held by subsidiary undertakings*

- 20 (1) The number, description and amount of the shares in and debentures of the company held by or on behalf of its subsidiary undertakings shall be disclosed.
- (2) Sub-paragraph (1) does not apply in relation to shares or debentures in the case of which the subsidiary undertaking is concerned as personal representative or, subject as follows, as trustee.
- (3) The exception for shares or debentures in relation to which the subsidiary undertaking is concerned as trustee does not apply if the company or any of its subsidiary undertakings is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.
- (4) Schedule 2 to this Act has effect for the interpretation of the reference in sub-paragraph (3) to a beneficial interest under a trust.

*Joint ventures*

- 21 (1) The following information shall be given where an undertaking is dealt with in the consolidated accounts by the method of proportional consolidation in accordance with paragraph 19 of Schedule 4A (joint ventures)—
- (a) the name of the undertaking;
  - (b) the address of the principal place of business of the undertaking;
  - (c) the factors on which joint management of the undertaking is based; and

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- (d) the proportion of the capital of the undertaking held by undertakings included in the consolidation.
- (2) Where the financial year of the undertaking did not end with that of the company, there shall be stated the date on which a financial year of the undertaking last ended before that date.

*Associated undertakings*

- 22 (1) The following information shall be given where an undertaking included in the consolidation has an interest in an associated undertaking.
- (2) The name of the associated undertaking shall be stated.
- (3) There shall be stated—
- (a) if the undertaking is incorporated outside Great Britain, the country in which it is incorporated;
  - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland;
  - (c) if it is unincorporated, the address of its principal place of business.
- (4) The following information shall be given with respect to the shares of the undertaking held—
- (a) by the parent company, and
  - (b) by the group;
- and the information under paragraphs (a) and (b) shall be shown separately.
- (5) There shall be stated—
- (a) the identity of each class of shares held, and
  - (b) the proportion of the nominal value of the shares of that class represented by those shares.
- (6) In this paragraph “associated undertaking” has the meaning given by paragraph 20 of Schedule 4A; and the information required by this paragraph shall be given notwithstanding that paragraph 22(3) of that Schedule (materiality) applies in relation to the accounts themselves.

*Other significant holdings of parent company or group*

- 23 (1) The information required by paragraphs 24 and 25 shall be given where at the end of the financial year the parent company has a significant holding in an undertaking which is not one of its subsidiary undertakings and does not fall within paragraph 21 (joint ventures) or paragraph 22 (associated undertakings).
- (2) A holding is significant for this purpose if—
- (a) it amounts to 10 per cent. or more of the nominal value of any class of shares in the undertaking, or
  - (b) the amount of the holding (as stated or included in the company’s individual accounts) exceeds one-tenth of the amount of its assets (as so stated).

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- 24 (1) The name of the undertaking shall be stated.
- (2) There shall be stated—
- (a) if the undertaking is incorporated outside Great Britain, the country in which it is incorporated;
  - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland;
  - (c) if it is unincorporated, the address of its principal place of business.
- (3) The following information shall be given with respect to the shares of the undertaking held by the parent company.
- (4) There shall be stated—
- (a) the identity of each class of shares held, and
  - (b) the proportion of the nominal value of the shares of that class represented by those shares.
- 25 (1) Where the company has a significant holding in an undertaking amounting to 20 per cent. or more of the nominal value of the shares in the undertaking, there shall also be stated—
- (a) the aggregate amount of the capital and reserves of the undertaking as at the end of its relevant financial year, and
  - (b) its profit or loss for that year.
- (2) That information need not be given in respect of an undertaking if—
- (a) the undertaking is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Great Britain or elsewhere, and
  - (b) the company's holding is less than 50 per cent. of the nominal value of the shares in the undertaking.
- (3) Information otherwise required by this paragraph need not be given if it is not material.
- (4) For the purposes of this paragraph the “relevant financial year” of an undertaking is—
- (a) if its financial year ends with that of the company, that year, and
  - (b) if not, its financial year ending last before the end of the company's financial year.
- 26 (1) The information required by paragraphs 27 and 28 shall be given where at the end of the financial year the group has a significant holding in an undertaking which is not a subsidiary undertaking of the parent company and does not fall within paragraph 21 (joint ventures) or paragraph 22 (associated undertakings).
- (2) A holding is significant for this purpose if—
- (a) it amounts to 10 per cent. or more of the nominal value of any class of shares in the undertaking, or
  - (b) the amount of the holding (as stated or included in the group accounts) exceeds one-tenth of the amount of the group's assets (as so stated).

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- 27 (1) The name of the undertaking shall be stated.
- (2) There shall be stated—
- (a) if the undertaking is incorporated outside Great Britain, the country in which it is incorporated;
  - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland;
  - (c) if it is unincorporated, the address of its principal place of business.
- (3) The following information shall be given with respect to the shares of the undertaking held by the group.
- (4) There shall be stated—
- (a) the identity of each class of shares held, and
  - (b) the proportion of the nominal value of the shares of that class represented by those shares.
- 28 (1) Where the holding of the group amounts to 20 per cent. or more of the nominal value of the shares in the undertaking, there shall also be stated—
- (a) the aggregate amount of the capital and reserves of the undertaking as at the end of its relevant financial year, and
  - (b) its profit or loss for that year.
- (2) That information need not be given if—
- (a) the undertaking is not required by any provision of this Act to deliver a copy of its balance sheet for its relevant financial year and does not otherwise publish that balance sheet in Great Britain or elsewhere, and
  - (b) the holding of the group is less than 50 per cent. of the nominal value of the shares in the undertaking.
- (3) Information otherwise required by this paragraph need not be given if it is not material.
- (4) For the purposes of this paragraph the “relevant financial year” of an outside undertaking is—
- (a) if its financial year ends with that of the parent company, that year, and
  - (b) if not, its financial year ending last before the end of the parent company’s financial year.

*Arrangements attracting merger relief*

- 29 (1) This paragraph applies to arrangements attracting merger relief, that is, where a company allots shares in consideration for the issue, transfer or cancellation of shares in another body corporate (“the other company”) in circumstances such that section 130 of this Act (share premium account) does not, by virtue of section 131(2) (merger relief), apply to the premiums on the shares.
- (2) If the parent company made such an arrangement during the financial year, the following information shall be given—
- (a) the name of the other company,

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- (b) the number, nominal value and class of shares allotted,
  - (c) the number, nominal value and class of shares in the other company issued, transferred or cancelled, and
  - (d) particulars of the accounting treatment adopted in the parent company's individual and group accounts in respect of the issue, transfer or cancellation, and
  - (e) particulars of the extent to which and manner in which the profit or loss for the financial year shown in the group accounts is affected by any profit or loss of the other company, or any of its subsidiary undertakings, which arose before the time of the arrangement.
- (3) Where the parent company made such an arrangement during the financial year, or during either of the two preceding financial years, and there is included in the consolidated profit and loss account—
- (a) any profit or loss realised during the financial year on the disposal of—
    - (i) any shares in the other company, or
    - (ii) any assets which were fixed assets of the other company or any of its subsidiary undertakings at the time of the arrangement, or
  - (b) any part of any profit or loss realised during the financial year on the disposal of any shares (other than shares in the other company) which was attributable to the fact that there were at the time of the disposal amongst the assets of the company which issued the shares, or any of its subsidiary undertakings, such shares or assets as are described in paragraph (a) above,
- then, the net amount of that profit or loss or, as the case may be, the part so attributable shall be shown, together with an explanation of the transactions to which the information relates.
- (4) For the purposes of this paragraph the time of the arrangement shall be taken to be—
- (a) where as a result of the arrangement the other company becomes a subsidiary undertaking of the company in question, the date on which it does so or, if the arrangement in question becomes binding only on the fulfilment of a condition, the date on which that condition is fulfilled;
  - (b) if the other company is already a subsidiary undertaking of that company, the date on which the shares are allotted or, if they are allotted on different days, the first day.

*Parent undertaking drawing up accounts for larger group*

- 30 (1) Where the parent company is itself a subsidiary undertaking, the following information shall be given with respect to that parent undertaking of the company which heads—
- (a) the largest group of undertakings for which group accounts are drawn up and of which that company is a member, and
  - (b) the smallest such group of undertakings.
- (2) The name of the parent undertaking shall be stated.
- (3) There shall be stated—
- (a) if the undertaking is incorporated outside Great Britain, the country in which it is incorporated;



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- (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland;
  - (c) if it is unincorporated, the address of its principal place of business.
- (4) If copies of the group accounts referred to in sub-paragraph (1) are available to the public, there shall also be stated the addresses from which copies of the accounts can be obtained.

#### *Identification of ultimate parent company*

- 31 (1) Where the parent company is itself a subsidiary undertaking, the following information shall be given with respect to the company (if any) regarded by the directors as being that company's ultimate parent company.
- (2) The name of that company shall be stated.
  - (3) If known to the directors, there shall be stated—
    - (a) if that company is incorporated outside Great Britain, the country in which it is incorporated;
    - (b) if it is incorporated in Great Britain, whether it is registered in England and Wales or in Scotland.
  - (4) In this paragraph “company” includes any body corporate.

#### *Construction of references to shares held by parent company or group*

- 32 (1) References in this Part of this Schedule to shares held by the parent company or the group shall be construed as follows.
- (2) For the purposes of paragraphs 16, 22(4) and (5) and 23 to 25 (information about holdings in subsidiary and other undertakings)—
    - (a) there shall be attributed to the parent company shares held on its behalf by any person; but
    - (b) there shall be treated as not held by the parent company shares held on behalf of a person other than the company.
  - (3) References to shares held by the group are to any shares held by or on behalf of the parent company or any of its subsidiary undertakings; but there shall be treated as not held by the group any shares held on behalf of a person other than the parent company or any of its subsidiary undertakings.
  - (4) Shares held by way of security shall be treated as held by the person providing the security—
    - (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights attached to the shares are exercisable only in accordance with his instructions, and
    - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights attached to the shares are exercisable only in his interests.

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## SCHEDULE 4

Section 6(4).

DISCLOSURE OF INFORMATION: EMOLUMENTS AND  
OTHER BENEFITS OF DIRECTORS AND OTHERS

1 Schedule 6 to the Companies Act 1985 is amended as follows.

2 For the heading substitute—

*“ Disclosure of information: emoluments  
and other benefits of directors and others ”.*

3 Insert the following provisions (which reproduce, with amendments, the former Part V of Schedule 5 to that Act) as Part I—

**“PART I**CHAIRMAN’S AND DIRECTORS’ EMOLUMENTS,  
PENSIONS AND COMPENSATION FOR LOSS OF OFFICE**Aggregate amount of directors’ emoluments**

- 1 (1) The aggregate amount of directors’ emoluments shall be shown.
- (2) This means the emoluments paid to or receivable by any person in respect of—
- (a) his services as a director of the company, or
  - (b) his services while director of the company—
    - (i) as director of any of its subsidiary undertakings, or
    - (ii) otherwise in connection with the management of the affairs of the company or any of its subsidiary undertakings.
- (3) There shall also be shown, separately, the aggregate amount within sub-paragraph (2)(a) and (b)(i) and the aggregate amount within sub-paragraph (2)(b)(ii).
- (4) For the purposes of this paragraph the “emoluments” of a person include—
- (a) fees and percentages,
  - (b) sums paid by way of expenses allowance (so far as those sums are chargeable to United Kingdom income tax),
  - (c) contributions paid in respect of him under any pension scheme, and
  - (d) the estimated money value of any other benefits received by him otherwise than in cash,

and emoluments in respect of a person’s accepting office as director shall be treated as emoluments in respect of his services as director.

*Status: Point in time view as at 10/03/1994.*

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### Details of chairman's and directors' emoluments

- 2 Where the company is a parent company or a subsidiary undertaking, or where the amount shown in compliance with paragraph 1(1) is £60,000 or more, the information required by paragraphs 3 to 6 shall be given with respect to the emoluments of the chairman and directors, and emoluments waived.
- 3 (1) The emoluments of the chairman shall be shown.
- (2) The “chairman” means the person elected by the directors to be chairman of their meetings, and includes a person who, though not so elected, holds an office (however designated) which in accordance with the company’s constitution carries with it functions substantially similar to those discharged by a person so elected.
- (3) Where there has been more than one chairman during the year, the emoluments of each shall be stated so far as attributable to the period during which he was chairman.
- (4) The emoluments of a person need not be shown if his duties as chairman were wholly or mainly discharged outside the United Kingdom.
- 4 (1) The following information shall be given with respect to the emoluments of directors.
- (2) There shall be shown the number of directors whose emoluments fell within each of the following bands—  
not more than £5,000,  
more than £5,000 but not more than £10,000,  
more than £10,000 but not more than £15,000,  
and so on.
- (3) If the emoluments of any of the directors exceeded that of the chairman, there shall be shown the greatest amount of emoluments of any director.
- (4) Where more than one person has been chairman during the year, the reference in sub-paragraph (3) to the emoluments of the chairman is to the aggregate of the emoluments of each person who has been chairman, so far as attributable to the period during which he was chairman.
- (5) The information required by sub-paragraph (2) need not be given in respect of a director who discharged his duties as such wholly or mainly outside the United Kingdom; and any such director shall be left out of account for the purposes of sub-paragraph (3).
- 5 In paragraphs 3 and 4 “emoluments” has the same meaning as in paragraph 1, except that it does not include contributions paid in respect of a person under a pension scheme.

### Emoluments waived

- 6 (1) There shall be shown—

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- (a) the number of directors who have waived rights to receive emoluments which, but for the waiver, would have fallen to be included in the amount shown under paragraph 1(1), and
  - (b) the aggregate amount of those emoluments.
- (2) For the purposes of this paragraph it shall be assumed that a sum not receivable in respect of a period would have been paid at the time at which it was due, and if such a sum was payable only on demand, it shall be deemed to have been due at the time of the waiver.

### **Pensions of directors and past directors**

- 7
- (1) There shall be shown the aggregate amount of directors' or past directors' pensions.
  - (2) This amount does not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions under it are substantially adequate for the maintenance of the scheme; but, subject to this, it includes any pension paid or receivable in respect of any such services of a director or past director as are mentioned in paragraph 1(2), whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person.
  - (3) The amount shown shall distinguish between pensions in respect of services as director, whether of the company or any of its subsidiary undertakings, and other pensions.
  - (4) References to pensions include benefits otherwise than in cash and in relation to so much of a pension as consists of such a benefit references to its amount are to the estimated money value of the benefit.

The nature of any such benefit shall also be disclosed.

### **Compensation to directors for loss of office**

- 8
- (1) There shall be shown the aggregate amount of any compensation to directors or past directors in respect of loss of office.
  - (2) This amount includes compensation received or receivable by a director or past director for—
    - (a) loss of office as director of the company, or
    - (b) loss, while director of the company or on or in connection with his ceasing to be a director of it, of—
      - (i) any other office in connection with the management of the company's affairs, or
      - (ii) any office as director or otherwise in connection with the management of the affairs of any subsidiary undertaking of the company;
- and shall distinguish between compensation in respect of the office of director, whether of the company or any of its subsidiary undertakings, and compensation in respect of other offices.

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- (3) References to compensation include benefits otherwise than in cash; and in relation to such compensation references to its amount are to the estimated money value of the benefit.

The nature of any such compensation shall be disclosed.

- (4) References to compensation for loss of office include compensation in consideration for, or in connection with, a person's retirement from office.

### **Sums paid to third parties in respect of directors' services**

- 9 (1) There shall be shown the aggregate amount of any consideration paid to or receivable by third parties for making available the services of any person—

- (a) as a director of the company, or  
(b) while director of the company—  
(i) as director of any of its subsidiary undertakings, or  
(ii) otherwise in connection with the management of the affairs of the company or any of its subsidiary undertakings.

- (2) The reference to consideration includes benefits otherwise than in cash; and in relation to such consideration the reference to its amount is to the estimated money value of the benefit.

The nature of any such consideration shall be disclosed.

- (3) The reference to third parties is to persons other than—  
(a) the director himself or a person connected with him or body corporate controlled by him, and  
(b) the company or any of its subsidiary undertakings.

### **Supplementary**

- 10 (1) The following applies with respect to the amounts to be shown under paragraphs 1, 7, 8 and 9.

- (2) The amount in each case includes all relevant sums paid by or receivable from—  
(a) the company; and  
(b) the company's subsidiary undertakings; and  
(c) any other person,

except sums to be accounted for to the company or any of its subsidiary undertakings or, by virtue of sections 314 and 315 of this Act (duty of directors to make disclosure on company takeover; consequence of non-compliance), to past or present members of the company or any of its subsidiaries or any class of those members.

- (3) The amount to be shown under paragraph 8 shall distinguish between the sums respectively paid by or receivable from the company, the company's subsidiary undertakings and persons other than the company and its subsidiary undertakings.

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- (4) References to amounts paid to or receivable by a person include amounts paid to or receivable by a person connected with him or a body corporate controlled by him (but not so as to require an amount to be counted twice).
- 11 (1) The amounts to be shown for any financial year under paragraphs 1, 7, 8 and 9 are the sums receivable in respect of that year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.
- (2) But where—
- (a) any sums are not shown in a note to the accounts for the relevant financial year on the ground that the person receiving them is liable to account for them as mentioned in paragraph 10(2), but the liability is thereafter wholly or partly released or is not enforced within a period of 2 years; or
- (b) any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year,
- those sums shall, to the extent to which the liability is released or not enforced or they are charged as mentioned above (as the case may be), be shown in a note to the first accounts in which it is practicable to show them and shall be distinguished from the amounts to be shown apart from this provision.
- 12 Where it is necessary to do so for the purpose of making any distinction required by the preceding paragraphs in an amount to be shown in compliance with this Part of this Schedule, the directors may apportion any payments between the matters in respect of which these have been paid or are receivable in such manner as they think appropriate.

### **Interpretation**

- 13 (1) The following applies for the interpretation of this Part of this Schedule.
- (2) A reference to a subsidiary undertaking of the company—
- (a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination (direct or indirect) of any other undertaking, includes (subject to the following sub-paragraph) that undertaking, whether or not it is or was in fact a subsidiary undertaking of the company, and
- (b) for the purposes of paragraphs 1 to 7 (including any provision of this Part of this Schedule referring to paragraph 1) is to an undertaking which is a subsidiary undertaking at the time the services were rendered, and for the purposes of paragraph 8 to a subsidiary undertaking immediately before the loss of office as director.
- (3) The following definitions apply—
- (a) “pension” includes any superannuation allowance, superannuation gratuity or similar payment,

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- (b) “pension scheme” means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and
  - (c) “contribution”, in relation to a pension scheme, means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.
- (4) References in this Part of this Schedule to a person being “connected” with a director, and to a director “controlling” a body corporate, shall be construed in accordance with section 346.

### Supplementary

14 This Part of this Schedule requires information to be given only so far as it is contained in the company’s books and papers or the company has the right to obtain it from the persons concerned.”.

- 4 (1) For the heading to the present Part I substitute—

### “PART II

#### LOANS, QUASI-LOANS AND OTHER DEALINGS IN FAVOUR OF DIRECTORS”

- (2) Paragraphs 1 to 3 and 5 to 14 of that Part shall be renumbered 15 to 27, and internal cross-references in that Part shall be renumbered accordingly.
- (3) Paragraph 4 is omitted.
- (4) In paragraph 1 (renumbered 15) for “Group accounts” substitute “The group accounts of a holding company, or if it is not required to prepare group accounts its individual accounts,”.
- (5) For the heading before paragraph 11 (renumbered 24) substitute—

#### “ Excluded transactions ”

- 5 In paragraph 14 (renumbered 27), make the existing provision sub-paragraph (1) and after it insert—

“(2) In this Part of this Schedule “director” includes a shadow director.”.

- 6 (1) For the heading to the present Part II substitute—

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### “PART III

#### OTHER TRANSACTIONS, ARRANGEMENTS AND AGREEMENTS”

- (2) Paragraphs 15 to 17 of that Part shall be renumbered 28 to 30, and internal cross-references in that Part shall be renumbered accordingly.
- (3) In paragraph 16 (renumbered 29), for “made as mentioned in section 233(1)” substitute “made by the company or a subsidiary of it for persons who at any time during the financial year were officers of the company (but not directors or shadow directors)”.
- 7 Omit the present Part III (disclosure required in case of banking companies), the substance of which is reproduced in Part IV of Schedule 7 to this Act.

### SCHEDULE 5

Section 8(2).

#### MATTERS TO BE INCLUDED IN DIRECTORS’ REPORT

- 1 Schedule 7 to the <sup>M2</sup>Companies Act 1985 (matters to be included in directors’ report) is amended as follows.

#### Marginal Citations

M2 1985 c. 6.

#### *Subsidiary undertakings*

- 2 (1) In paragraph 1(1) (significant changes in fixed assets) for “subsidiaries” substitute “subsidiary undertakings”.
- (2) In paragraph 6 (general information), for “subsidiaries” in each place where it occurs (three times) substitute “subsidiary undertakings”.

#### *Directors’ interests*

- 3 For paragraph 2 (directors’ interests) substitute—
- “2 (1) The information required by paragraphs 2A and 2B shall be given in the directors’ report, or by way of notes to the company’s annual accounts, with respect to each person who at the end of the financial year was a director of the company.



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- (2) In those paragraphs—
- (a) “the register” means the register of directors’ interests kept by the company under section 325; and
  - (b) references to a body corporate being in the same group as the company are to its being a subsidiary or holding company, or another subsidiary of a holding company, of the company.
- 2A (1) It shall be stated with respect to each director whether, according to the register, he was at the end of the financial year interested in shares in or debentures of the company or any other body corporate in the same group.
- (2) If he was so interested, there shall be stated the number of shares in and amount of debentures of each body (specifying it) in which, according to the register, he was then interested.
- (3) If a director was interested at the end of the financial year in shares in or debentures of the company or any other body corporate in the same group—
- (a) it shall also be stated whether, according to the register, he was at the beginning of the financial year (or, if he was not then a director, when he became one) interested in shares in or debentures of the company or any other body corporate in the same group, and
  - (b) if he was so interested, there shall be stated the number of shares in and amount of debentures of each body (specifying it) in which, according to the register, he was then interested.
- (4) In this paragraph references to an interest in shares or debentures have the same meaning as in section 324; and references to the interest of a director include any interest falling to be treated as his for the purposes of that section.
- (5) The reference above to the time when a person became a director is, in the case of a person who became a director on more than one occasion, to the time when he first became a director.
- 2B (1) It shall be stated with respect to each director whether, according to the register, any right to subscribe for shares in or debentures of the company or another body corporate in the same group was during the financial year granted to, or exercised by, the director or a member of his immediate family.
- (2) If any such right was granted to, or exercised by, any such person during the financial year, there shall be stated the number of shares in and amount of debentures of each body (specifying it) in respect of which, according to the register, the right was granted or exercised.
- (3) A director’s “immediate family” means his or her spouse and infant children; and for this purpose “children” includes step-children, and “infant”, in relation to Scotland, means pupil or minor.
- (4) The reference above to a member of the director’s immediate family does not include a person who is himself or herself a director of the company.”.

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## SCHEDULE 6

Section 13(2).

### [SCHEDULE 8 TO THE COMPANIES ACT 1985] EXEMPTIONS FOR SMALL AND MEDIUM-SIZED COMPANIES

#### PART I

#### SMALL COMPANIES

##### *Balance sheet*

- 1 (1) The company may deliver a copy of an abbreviated version of the full balance sheet, showing only those items to which a letter or Roman number is assigned in the balance sheet format adopted under Part I of Schedule 4, but in other respects corresponding to the full balance sheet.
- (2) If a copy of an abbreviated balance sheet is delivered, there shall be disclosed in it or in a note to the company's accounts delivered—
  - (a) the aggregate of the amounts required by note (5) of the notes on the balance sheet formats set out in Part I of Schedule 4 to be shown separately for each item included under debtors (amounts falling due after one year), and
  - (b) the aggregate of the amounts required by note (13) of those notes to be shown separately for each item included under creditors in Format 2 (amounts falling due within one year or after more than one year).
- (3) The provisions of section 233 as to the signing of the copy of the balance sheet delivered to the registrar apply to a copy of an abbreviated balance sheet delivered in accordance with this paragraph.

##### *Profit and loss account*

- 2 A copy of the company's profit and loss account need not be delivered.

##### *Disclosure of information in notes to accounts*

- 3 (1) Of the information required by Part III of Schedule 4 (information to be given in notes to accounts if not given in the accounts themselves) only the information required by the following provisions need be given—
  - paragraph 36 (accounting policies),
  - paragraph 38 (share capital),
  - paragraph 39 (particulars of allotments),
  - paragraph 42 (fixed assets), so far as it relates to those items to which a letter or Roman number is assigned in the balance sheet format adopted,
  - paragraph 48(1) and (4) (particulars of debts),
  - paragraph 58(1) (basis of conversion of foreign currency amounts into sterling),

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paragraph 58(2) (corresponding amounts for previous financial year), so far as it relates to amounts stated in a note to the company's accounts by virtue of a requirement of Schedule 4 or under any other provision of this Act.

- (2) Of the information required by Schedule 5 to be given in notes to the accounts, the information required by the following provisions need not be given—
- paragraph 4 (financial years of subsidiary undertakings),
  - paragraph 5 (additional information about subsidiary undertakings),
  - paragraph 6 (shares and debentures of company held by subsidiary undertakings),
  - paragraph 10 (arrangements attracting merger relief).
- (3) Of the information required by Schedule 6 to be given in notes to the accounts, the information required by Part I (directors' and chairman's emoluments, pensions and compensation for loss of office) need not be given.

#### *Directors' report*

- 4 A copy of the directors' report need not be delivered.

## **PART II**

### **SMALL COMPANIES**

#### *Profit and loss account*

- 5 The company may deliver a profit and loss account in which the following items listed in the profit and loss account formats set out in Part I of Schedule 4 are combined as one item under the heading "gross profit or loss"—
- Items 1, 2, 3 and 6 in Format 1;
  - Items 1 to 5 in Format 2;
  - Items A.1, B.1 and B.2 in Format 3;
  - Items A.1, A.2 and B.1 to B.4 in Format 4.

#### *Disclosure of information in notes to accounts*

- 6 The information required by paragraph 55 of Schedule 4 (particulars of turnover) need not be given.

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### PART III

#### SUPPLEMENTARY PROVISIONS

##### *Statement that advantage taken of exemptions*

- 7 (1) Where the directors of a company take advantage of the exemptions conferred by Part I or Part II of this Schedule, the company's balance sheet shall contain—
- (a) a statement that advantage is taken of the exemptions conferred by Part I or, as the case may be, Part II of this Schedule, and
  - (b) a statement of the grounds on which, in the directors' opinion, the company is entitled to those exemptions.
- (2) The statements shall appear in the balance sheet immediately above the signature required by section 233.

##### *Special auditors' report*

- 8 (1) If the directors of a company propose to take advantage of the exemptions conferred by Part I or II of this Schedule, it is the auditors' duty to provide them with a report stating whether in their opinion the company is entitled to those exemptions and whether the documents to be proposed to be delivered in accordance with this Schedule are properly prepared.
- (2) The accounts delivered shall be accompanied by a special report of the auditors stating that in their opinion—
- (a) the company is entitled to the exemptions claimed in the directors' statement, and
  - (b) the accounts to be delivered are properly prepared in accordance with this Schedule.
- (3) In such a case a copy of the auditors' report under section 235 need not be delivered separately, but the full text of it shall be reproduced in the special report; and if the report under section 235 is qualified there shall be included in the special report any further material necessary to understand the qualification.
- (4) Section 236 (signature of auditors' report) applies to a special report under this paragraph as it applies to a report under section 235.

##### *Dormant companies*

- 9 Paragraphs 7 and 8 above do not apply where the company is exempt by virtue of section 250 (dormant companies) from the obligation to appoint auditors.

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### *Requirements in connection with publication of accounts*

- 10 (1) Where advantage is taken of the exemptions conferred by Part I or II of this Schedule, section 240 (requirements in connection with publication of accounts) has effect with the following adaptations.
- (2) Accounts delivered in accordance with this Schedule and accounts in the form in which they would be required to be delivered apart from this Schedule are both “statutory accounts” for the purposes of that section.
- (3) References in that section to the auditors’ report under section 235 shall be read, in relation to accounts delivered in accordance with this Schedule, as references to the special report under paragraph 8 above.

## SCHEDULE 7

Section 18(3) and (4).

### SPECIAL PROVISIONS FOR BANKING AND INSURANCE COMPANIES AND GROUPS

#### *Preliminary*

Schedule 9 to the <sup>M3</sup>Companies Act 1985 is amended in accordance with this Schedule, as follows—

- (a) for the heading of the Schedule substitute “ SPECIAL PROVISIONS FOR BANKING AND INSURANCE COMPANIES AND GROUPS ”;
- (b) omit the introductory paragraph preceding Part I, together with its heading;
- (c) make the present provisions of Parts I to V of the Schedule (as amended by Part I of this Schedule) Part I of the Schedule, and accordingly—
- (i) for the descriptive Part heading before paragraph 2 substitute “ FORM AND CONTENT OF ACCOUNTS ”, and
- (ii) omit the Part headings before paragraphs 19, 27, 31 and 32;
- (d) the provisions of Parts II, III and IV of this Schedule have effect as Parts II, III and IV of Schedule 9 to the Companies Act 1985.

#### **Marginal Citations**

**M3** 1985 c. 6.

## **PART I**

### FORM AND CONTENT OF ACCOUNTS

- 1 In paragraph 10(1)(c) of Schedule 9 to the <sup>M4</sup>Companies Act 1985 (disclosure of outstanding loans in connection with certain cases of financial assistance for purchase of company’s own shares), after “153(4)(b)” insert “, (bb) ”.

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### Marginal Citations

M4 1985 c. 6.

- 2 In paragraph 13 of that Schedule (information supplementing balance sheet), omit sub-paragraph (3) (information as to acquisition of, or creation of lien or charge over, company's own shares).
- 3 In paragraph 17(5) of that Schedule (statement of turnover: companies exempt from requirement) for "neither a holding company nor a subsidiary of another body corporate" substitute "neither a parent company nor a subsidiary undertaking".
- 4 After paragraph 18 of that Schedule insert—

### Supplementary provisions

- "18A (1) Accounting policies shall be applied consistently within the same accounts and from one financial year to the next.
- (2) If it appears to the directors of a company that there are special reasons for departing from the principle stated in sub-paragraph (1) in preparing the company's accounts in respect of any financial year, they may do so; but particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.
- "18B It shall be stated whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards and the reasons for it shall be given.
- "18C (1) In respect of every item shown in the balance sheet or profit and loss account, or stated in a note to the accounts, there shall be shown or stated the corresponding amount for the financial year immediately preceding that to which the accounts relate, subject to sub-paragraph (3).
- (2) Where the corresponding amount is not comparable, it shall be adjusted and particulars of the adjustment and the reasons for it shall be given in a note to the accounts.
- (3) Sub-paragraph (1) does not apply in relation to an amount shown—
- (a) as an amount the source or application of which is required by paragraph 8 above (reserves and provisions),
  - (b) in pursuance of paragraph 13(10) above (acquisitions and disposals of fixed assets),
  - (c) by virtue of paragraph 13 of Schedule 4A (details of accounting treatment of acquisitions),
  - (d) by virtue of paragraph 2, 8(3), 16, 21(1)(d), 22(4) or (5), 24(3) or (4) or 27(3) or (4) of Schedule 5 (shareholdings in other undertakings), or
  - (e) by virtue of Part II or III of Schedule 6 (loans and other dealings in favour of directors and others)."

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- 5 (1) Before paragraph 19 of that Schedule insert the heading “ *Provisions where company is parent company or subsidiary undertaking* ”; and that paragraph is amended as follows.
  - (2) In sub-paragraph (1) for the words from “is a holding company” onwards substitute “ is a parent company ”.
  - (3) In sub-paragraph (2)—
    - (a) for “subsidiaries” (four times) substitute “ subsidiary undertakings ”, and
    - (b) in paragraph (a), for “Part I” substitute “ paragraphs 5, 6, 10, 13 and 14 ”.
  - (4) Omit sub-paragraphs (3) to (7).
  
- 6 For paragraph 20 of that Schedule substitute—
  - “20 (1) This paragraph applies where the company is a subsidiary undertaking.
  - (2) The balance sheet of the company shall show—
    - (a) the aggregate amount of its indebtedness to undertakings of which it is a subsidiary undertaking or which are fellow subsidiary undertakings, and
    - (b) the aggregate amount of the indebtedness of all such undertakings to it,  
distinguishing in each case between indebtedness in respect of debentures and otherwise.
  - (3) The balance sheet shall also show the aggregate amount of assets consisting of shares in fellow subsidiary undertakings.”.
  
- 7 Omit paragraphs 21 to 26 of that Schedule.
  
- 8 (1) Before paragraph 27 of that Schedule insert the heading “ *Exceptions for certain companies* ”; and that paragraph is amended as follows.
  - (2) In sub-paragraph (2)—
    - (a) for “Part I of this Schedule” substitute “ paragraphs 2 to 18 of this Schedule ”, and
    - (b) in paragraph (b) for the words from “paragraphs 15” to the end substitute “ and paragraph 15 ”.
  - (3) In sub-paragraph (4), omit “of the said Part I”.
  
- 9 In paragraph 28 of that Schedule, in sub-paragraph (1) (twice) and in sub-paragraph (2) for “Part I” substitute “ paragraphs 2 to 18 ”.
  
- 10 After that paragraph insert—

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- “28A Where a company is entitled to, and has availed itself of, any of the provisions of paragraph 27 or 28 of this Schedule, section 235(2) only requires the auditors to state whether in their opinion the accounts have been properly prepared in accordance with this Act.”.
- 11 Omit paragraphs 29 to 31 of that Schedule.
- 12 Before paragraph 32 of that Schedule insert the heading “ *Interpretation* ”; and in sub-paragraphs (1) and (2) of that paragraph for “this Schedule” substitute “ this Part of this Schedule ”.
- 13 In paragraph 36 of that Schedule for “this Schedule” substitute “ this Part of this Schedule ”.

## PART II

[PART II OF SCHEDULE 9 TO THE COMPANIES ACT 1985]

ACCOUNTS OF BANKING OR INSURANCE GROUP

*Undertakings to be included in consolidation*

- 1 The following descriptions of undertaking shall not be excluded from consolidation under section 229(4) (exclusion of undertakings whose activities are different from those of the undertakings consolidated)—
- (a) in the case of a banking group, an undertaking (other than a credit institution) whose activities are a direct extension of or ancillary to banking business;
  - (b) in the case of an insurance group, an undertaking (other than one carrying on insurance business) whose activities are a direct extension of or ancillary to insurance business.

For the purposes of paragraph (a) “banking” means the carrying on of a deposit-taking business within the meaning of the <sup>M5</sup>Banking Act 1987.

### Marginal Citations

M5 1987 c. 22.

*General application of provisions applicable to individual accounts*

- 2 (1) In paragraph 1 of Schedule 4A (application to group accounts of provisions applicable to individual accounts), the reference in sub-paragraph (1) to the



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provisions of Schedule 4 shall be construed as a reference to the provisions of Part I of this Schedule; and accordingly—

- (a) the reference in sub-paragraph (2) to paragraph 59 of Schedule 4 shall be construed as a reference to paragraphs 19(2) and 20 of Part I of this Schedule; and
  - (b) sub-paragraph (3) shall be omitted.
- (2) The general application of the provisions of Part I of this Schedule in place of those of Schedule 4 is subject to the following provisions.

*Treatment of goodwill*

- 3
- (1) The rules in paragraph 21 of Schedule 4 relating to the treatment of goodwill, and the rules in paragraphs 17 to 19 of that Schedule (valuation of fixed assets) so far as they relate to goodwill, apply for the purpose of dealing with any goodwill arising on consolidation.
  - (2) Goodwill shall be shown as a separate item in the balance sheet under an appropriate heading; and this applies notwithstanding anything in paragraph 10(1)(b) or (2) of Part I of this Schedule (under which goodwill, patents and trade marks may be stated in the company's individual accounts as a single item).

*Minority interests and associated undertakings*

- 4
- The information required by paragraphs 17 and 20 to 22 of Schedule 4A (minority interests and associated undertakings) to be shown under separate items in the formats set out in Part I of Schedule 4 shall be shown separately in the balance sheet and profit and loss account under appropriate headings.

*Companies entitled to benefit of exemptions*

- 5
- (1) Where a banking or insurance company is entitled to the exemptions conferred by paragraph 27 or 28 of Part I of this Schedule, a group headed by that company is similarly entitled.
  - (2) Paragraphs 27(4), 28(2) and 28A (accounts not to be taken to be other than true and fair; duty of auditors) apply accordingly where advantage is taken of those exemptions in relation to group accounts.

*Information as to undertaking in which shares held as result of financial assistance operation*

- 6
- (1) The following provisions apply where the parent company of a banking group has a subsidiary undertaking which—
    - (a) is a credit institution of which shares are held as a result of a financial assistance operation with a view to its reorganisation or rescue, and
    - (b) is excluded from consolidation under section 229(3)(c) (interest held with a view to resale).

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- (2) Information as to the nature and terms of the operation shall be given in a note to the group accounts and there shall be appended to the copy of the group accounts delivered to the registrar in accordance with section 242 a copy of the undertaking's latest individual accounts and, if it is a parent undertaking, its latest group accounts.
- If the accounts appended are required by law to be audited, a copy of the auditors' report shall also be appended.
- (3) If any document required to be appended is in a language other than English, the directors shall annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.
- (4) The above requirements are subject to the following qualifications—
- (a) an undertaking is not required to prepare for the purposes of this paragraph accounts which would not otherwise be prepared, and if no accounts satisfying the above requirements are prepared none need be appended;
  - (b) the accounts of an undertaking need not be appended if they would not otherwise be required to be published, or made available for public inspection, anywhere in the world, but in that case the reason for not appending the accounts shall be stated in a note to the consolidated accounts.
- (5) Where a copy of an undertaking's accounts is required to be appended to the copy of the group accounts delivered to the registrar, that fact shall be stated in a note to the group accounts.
- (6) Subsections (2) to (4) of section 242 (penalties, &c. in case of default) apply in relation to the requirements of this paragraph as regards the delivery of documents to the registrar as they apply in relation to the requirements of subsection (1) of that section.

### PART III

[PART III OF SCHEDULE 9 TO THE COMPANIES ACT 1985]

#### ADDITIONAL DISCLOSURE: RELATED UNDERTAKINGS

- 1 Where accounts are prepared in accordance with the special provisions of this Part relating to banking companies or groups, there shall be disregarded for the purposes of—
- (a) paragraphs 7(2)(a), 23(2)(a) and 26(2)(a) of Schedule 5 (information about significant holdings in undertakings other than subsidiary undertakings: definition of 10 per cent. holding), and
  - (b) paragraphs 9(1), 25(1) and 28(1) of that Schedule (additional information in case of 20 per cent. holding),
- any holding of shares not comprised in the equity share capital of the undertaking in question.

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## PART IV

### [PART IV OF SCHEDULE 9 TO THE COMPANIES ACT 1985]

#### ADDITIONAL DISCLOSURE: EMOLUMENTS AND OTHER BENEFITS OF DIRECTORS AND OTHERS

- 1 The provisions of this Part of this Schedule have effect with respect to the application of Schedule 6 (additional disclosure: emoluments and other benefits of directors and others) to a banking company or the holding company of such a company.

#### *Loans, quasi-loans and other dealings*

- 2 Part II of Schedule 6 (loans, quasi-loans and other dealings) does not apply for the purposes of accounts prepared by a banking company, or a company which is the holding company of a banking company, in relation to a transaction or arrangement of a kind mentioned in section 330, or an agreement to enter into such a transaction or arrangement, to which that banking company is a party.

#### *Other transactions, arrangements and agreements*

- 3 (1) Part III of Schedule 6 (other transactions, arrangements and agreements) applies for the purposes of accounts prepared by a banking company, or a company which is the holding company of a banking company, only in relation to a transaction, arrangement or agreement made by that banking company for—
- (a) a person who was a director of the company preparing the accounts, or who was connected with such a director, or
  - (b) a person who was a chief executive or manager (within the meaning of the <sup>M6</sup>Banking Act 1987) of that company or its holding company.
- (2) References in that Part to officers of the company shall be construed accordingly as including references to such persons.
- (3) In this paragraph “director” includes a shadow director.
- (4) For the purposes of that Part as it applies by virtue of this paragraph, a company which a person does not control shall not be treated as connected with him.
- (5) Section 346 of this Act applies for the purposes of this paragraph as regards the interpretation of references to a person being connected with a director or controlling a company.

#### Marginal Citations

M6 1987 c. 22.

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## SCHEDULE 8

Section 18(5).

### [SCHEDULE 10 TO THE COMPANIES ACT 1985] DIRECTORS' REPORT WHERE ACCOUNTS PREPARED IN ACCORDANCE WITH SPECIAL PROVISIONS FOR BANKING OR INSURANCE COMPANIES OR GROUPS

#### *Recent issues*

- 1
- (1) This paragraph applies where a company prepares individual accounts in accordance with the special provisions of this Part relating to banking or insurance companies.
  - (2) If in the financial year to which the accounts relate the company has issued any shares or debentures, the directors' report shall state the reason for making the issue, the classes of shares or debentures issued and, as respects each class, the number of shares or amount of debentures issued and the consideration received by the company for the issue.

#### *Turnover and profitability*

- 2
- (1) This paragraph applies where a company prepares group accounts in accordance with the special provisions of this Part relating to banking or insurance groups.
  - (2) If in the course of the financial year to which the accounts relate the group carried on business of two or more classes (other than banking or discounting or a class prescribed for the purposes of paragraph 17(2) of Part I of Schedule 9) that in the opinion of the directors differ substantially from each other, there shall be contained in the directors' report a statement of—
    - (a) the proportions in which the turnover for the financial year (so far as stated in the consolidated accounts) is divided amongst those classes (describing them), and
    - (b) as regards business of each class, the extent or approximate extent (expressed in money terms) to which, in the opinion of the directors, the carrying on of business of that class contributed to or restricted the profit or loss of the group for that year (before taxation).
  - (3) In sub-paragraph (2) "the group" means the undertakings included in the consolidation.
  - (4) For the purposes of this paragraph classes of business which in the opinion of the directors do not differ substantially from each other shall be treated as one class.

#### *Labour force and wages paid*

- 3
- (1) This paragraph applies where a company prepares individual or group accounts in accordance with the special provisions of this Part relating to banking or insurance companies or groups.
  - (2) There shall be stated in the directors' report—

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- (a) the average number of persons employed by the company or, if the company prepares group accounts, by the company and its subsidiary undertakings, and
  - (b) the aggregate amount of the remuneration paid or payable to persons so employed.
- (3) The average number of persons employed shall be determined by adding together the number of persons employed (whether throughout the week or not) in each week of the financial year and dividing that total by the number of weeks in the financial year.
- (4) The aggregate amount of the remuneration paid or payable means the total amount of remuneration paid or payable in respect of the financial year; and for this purpose remuneration means gross remuneration and includes bonuses, whether payable under contract or not.
- (5) The information required by this paragraph need not be given if the average number of persons employed is less than 100.
- (6) No account shall be taken for the purposes of this paragraph of persons who worked wholly or mainly outside the United Kingdom.
- (7) This paragraph does not apply to a company which is a wholly-owned subsidiary of a company incorporated in Great Britain.

## SCHEDULE 9

Section 21(2).

### [SCHEDULE 10A TO THE COMPANIES ACT 1985] PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTARY PROVISIONS

#### *Introduction*

- 1 The provisions of this Schedule explain expressions used in section 258 (parent and subsidiary undertakings) and otherwise supplement that section.

#### *Voting rights in an undertaking*

- 2 (1) In section 258(2)(a) and (d) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.
- (2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

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

- 3 (1) In section 258(2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.
- (2) An undertaking shall be treated as having the right to appoint to a directorship if—
- (a) a person's appointment to it follows necessarily from his appointment as director of the undertaking, or
  - (b) the directorship is held by the undertaking itself.
- (3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

*Right to exercise dominant influence*

- 4 (1) For the purposes of section 258(2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.
- (2) A "control contract" means a contract in writing conferring such a right which—
- (a) is of a kind authorised by the memorandum or articles of the undertaking in relation to which the right is exercisable, and
  - (b) is permitted by the law under which that undertaking is established.
- (3) This paragraph shall not be read as affecting the construction of the expression "actually exercises a dominant influence" in section 258(4)(a).

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

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

*Rights held by one person on behalf of another*

- 6 Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- 7 (1) Rights held by a person as nominee for another shall be treated as held by the other.

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- (2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

*Rights attached to shares held by way of security*

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

*Rights attributed to parent undertaking*

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

*Disregard of certain rights*

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

*Supplementary*

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

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## SCHEDULE 10

Section 23.

## AMENDMENTS CONSEQUENTIAL ON PART I

## PART I

## AMENDMENTS OF THE COMPANIES ACT 1985

1 In section 46 (meaning of “unqualified” auditors’ report in section 43(3)), for subsections (2) to (6) substitute—

“(2) If the balance sheet was prepared for a financial year of the company, the reference is to an auditors’ report stating without material qualification the auditors’ opinion that the balance sheet has been properly prepared in accordance with this Act.

(3) If the balance sheet was not prepared for a financial year of the company, the reference is to an auditors’ report stating without material qualification the auditors’ opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been so prepared.

For the purposes of an auditors’ report under this subsection the provisions of this Act shall be deemed to apply with such modifications as are necessary by reason of the fact that the balance sheet is not prepared for a financial year of the company.

(4) A qualification shall be regarded as material unless the auditors state in their report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company’s balance sheet) whether at the balance sheet date the amount of the company’s net assets was not less than the aggregate of its called up share capital and undistributable reserves.

In this subsection “net assets” and “undistributable reserves” have the meaning given by section 264(2) and (3).”.

2 In section 209(5)(a)(i) for “an authorised institution” substitute “a banking company”.

3 In sections 211(9) and 215(4) for “paragraph 3 or 10 of Schedule 5” substitute “section 231(3)”.

4 In section 271(3), for “section 236” substitute “section 235”.

5 In section 272(3)—

- (a) for “section 228” substitute “section 226”, and
- (b) for “section 238” substitute “section 233”.



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6 In sections 272(5) and 273(7) for “section 241(3)(b)” substitute “the second sentence of section 242(1)”.

7 In section 276(b) for “34(4)(b)” substitute “34(3)(a)”.

8 For section 279 substitute—

**“279 Distributions by banking or insurance companies.**

Where a company’s accounts relevant for the purposes of this Part are prepared in accordance with the special provisions of Part VII relating to banking or insurance companies, sections 264 to 275 apply with the modifications shown in Schedule 11.”.

9 In section 289(4) for “section 252(5)” substitute “section 250(3)”.

10 In sections 338(4), 339(4), <sup>F1</sup> . . . and 344(2) for “an authorised institution”, wherever occurring, substitute “a banking company”.

**Textual Amendments**

**F1** Word in *Sch. 10 para. 10* repealed (28.2.1994) by *S.I. 1994/233, regs. 1(2), 6(5)(a)*

<sup>F2</sup>11 . . . . .

**Textual Amendments**

**F2** *Sch. 10 para. 11* repealed (28.2.1994) by *S.I. 1994/233, regs. 1(2), 6(5)(b)*

12 In section 699(3) for “section 241(3)” substitute “section 242(1)”.

13 In Part XXIII (oversea companies), for Chapter II (delivery of accounts) substitute—

**“CHAPTER II**

**DELIVERY OF ACCOUNTS AND REPORTS**

**Preparation of accounts and reports by overseas companies.**

700 (1) Every overseas company shall in respect of each financial year of the company prepare the like accounts and directors’ report, and cause to be prepared such an auditors’ report, as would be required if the company were formed and registered under this Act.

(2) The Secretary of State may by order—

(a) modify the requirements referred to in subsection (1) for the purpose of their application to overseas companies;

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- (b) exempt an overseas company from those requirements or from such of them as may be specified in the order.
- (3) An order may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (4) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Overseas company's financial year and accounting reference periods.**

- 701 (1) Sections 223 to 225 (financial year and accounting reference periods) apply to an overseas company, subject to the following modifications.
- (2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Great Britain.
  - (3) Omit section 225(4) (restriction on frequency with which current accounting reference period may be extended).

#### **Delivery to registrar of accounts and reports of overseas company.**

- 702 (1) An overseas company shall in respect of each financial year of the company deliver to the registrar copies of the accounts and reports prepared in accordance with section 700.

If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

- (2) In relation to an overseas company the period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference period.

This is subject to the following provisions of this section.

- (3) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company's establishing a place of business in Great Britain.
- (4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under section 225 (alteration of accounting reference date), the period allowed is that applicable in accordance with the above provisions or three months from the date of the notice under that section, whichever last expires.
- (5) If for any special reason the Secretary of State thinks fit he may, on an application made before the expiry of the period otherwise allowed, by notice in writing to an overseas company extend that period by such further period as may be specified in the notice.

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- (6) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.

**Penalty for non-compliance.**

703 (1) If the requirements of section 702(1) are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Act, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

- (2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

- (3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Act.”.

14 In section 711(1)(k) for “section 241 (annual accounts)” substitute “section 242(1) (accounts and reports)”.

15 For section 742 (expressions used in connection with accounts) substitute—

**“742 Expressions used in connection with accounts.**

- (1) In this Act, unless a contrary intention appears, the following expressions have the same meaning as in Part VII (accounts)—

“annual accounts”,  
“accounting reference date” and “accounting reference period”,  
“balance sheet” and “balance sheet date”,  
“current assets”,  
“financial year”, in relation to a company,  
“fixed assets”,  
“parent company” and “parent undertaking”,  
“profit and loss account”, and  
“subsidiary undertaking”.

- (2) References in this Act to “realised profits” and “realised losses”, in relation to a company’s accounts, shall be construed in accordance with section 262(3).”.

16 In section 744 (interpretation), omit the definition of “authorised institution” and at the appropriate place insert—

““banking company” means a company which is authorised under the Banking Act 1987;”.

17 In Schedule 1, in paragraph 2(2)(a) for “section 252(5)” substitute “section 250(3)”.

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- 18 (1) Schedule 2 (interpretation of references to “beneficial interest”) is amended as follows.
- (2) After the heading at the beginning of the Schedule, and before the cross-heading preceding paragraph 1, insert the following heading—

**“PART I**

REFERENCES IN SECTIONS 23, 145, 146 AND 148”.

- (3) In paragraph 1—
- (a) in sub-paragraph (1) omit “paragraph 60(2) of Schedule 4, or paragraph 19(3) of Schedule 9”; and
  - (b) omit sub-paragraph (5).
- (4) In paragraph 3—
- (a) in sub-paragraph (1) omit “, paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”; and
  - (b) omit sub-paragraph (3).
- (5) In paragraph 4—
- (a) in sub-paragraph (1) omit “(whether as personal representative or otherwise)”, and
  - (b) in sub-paragraph (2) omit “, paragraph 60(2) of Schedule 4 and paragraph 19(3) of Schedule 9”; and at the end add—
- “(3) As respects sections 145, 146 and 148, sub-paragraph (1) above applies where a company is a personal representative as it applies where a company is a trustee.”.
- (6) In paragraph 5(1) for “this Schedule” substitute “this Part of this Schedule”.
- (7) After paragraph 5 insert the following—

**“PART II**

REFERENCES IN SCHEDULE 5

**Residual interests under pension and employees’ share schemes**

- 6 (1) Where shares in an undertaking are held on trust for the purposes of a pension scheme or an employees’ share scheme, there shall be disregarded any residual interest which has not vested in possession, being an interest of the undertaking or any of its subsidiary undertakings.
- (2) In this paragraph a “residual interest” means a right of the undertaking in question (the “residual beneficiary”) to receive any of the trust property in the event of—
- (a) all the liabilities arising under the scheme having been satisfied or provided for, or
  - (b) the residual beneficiary ceasing to participate in the scheme, or

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- (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.
- (3) In sub-paragraph (2) references to a right include a right dependent on the exercise of a discretion vested by the scheme in the trustee or any other person; and references to liabilities arising under a scheme include liabilities that have resulted or may result from the exercise of any such discretion.
- (4) For the purposes of this paragraph a residual interest vests in possession—
  - (a) in a case within sub-paragraph (2)(a), on the occurrence of the event there mentioned, whether or not the amount of the property receivable pursuant to the right mentioned in that sub-paragraph is then ascertained;
  - (b) in a case within sub-paragraph (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to that beneficiary any of the property receivable pursuant to that right.

#### **Employer's charges and other rights of recovery**

- 7 (1) Where shares in an undertaking are held on trust, there shall be disregarded—
- (a) if the trust is for the purposes of a pension scheme, any such rights as are mentioned in sub-paragraph (2) below;
  - (b) if the trust is for the purposes of an employees' share scheme, any such rights as are mentioned in paragraph (a) of that sub-paragraph, being rights of the undertaking or any of its subsidiary undertakings.
- (2) The rights referred to are—
- (a) any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member, and
  - (b) any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained under section 47 of the Social Security Pensions Act 1975 (deduction of premium from refund of pension contributions) or otherwise as reimbursement or partial reimbursement for any state scheme premium paid in connection with the scheme under Part III of that Act.

#### **Trustee's right to expenses, remuneration, indemnity, &c.**

- 8 Where an undertaking is a trustee, there shall be disregarded any rights which the undertaking has in its capacity as trustee including, in particular, any right to recover its expenses or be remunerated out of the trust property and any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the undertaking in the performance of its duties as trustee.

#### **Supplementary**

- 9 (1) The following applies for the interpretation of this Part of this Schedule.

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- (2) “Undertaking”, and “shares” in relation to an undertaking, have the same meaning as in Part VII.
  - (3) This Part of this Schedule applies in relation to debentures as it applies in relation to shares.
  - (4) “Pension scheme” means any scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees; and “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.
  - (5) In sub-paragraph (4) of this paragraph and in paragraph 7(2) “employee” and “employer” shall be read as if a director of an undertaking were employed by it.”.
- 19 (1) Part II of Schedule 3 (prospectuses: auditors’ and accountants’ reports to be set out) is amended as follows.
- (2) In paragraph 16 (auditors’ reports), in sub-paragraph (2) for “subsidiaries” substitute “subsidiary undertakings” and for sub-paragraph (3) substitute—
- “(3) If the company has subsidiary undertakings, the report shall—
- (a) deal separately with the company’s profits or losses as provided by sub-paragraph (2), and in addition deal either—
    - (i) as a whole with the combined profits or losses of its subsidiary undertakings, so far as they concern members of the company, or
    - (ii) individually with the profits or losses of each of its subsidiary undertakings, so far as they concern members of the company,
 or, instead of dealing separately with the company’s profits or losses, deal as a whole with the profits or losses of the company and (so far as they concern members of the company) with the combined profits and losses of its subsidiary undertakings; and
  - (b) deal separately with the company’s assets and liabilities as provided by sub-paragraph (2), and in addition deal either—
    - (i) as a whole with the combined assets and liabilities of its subsidiary undertakings, with or without the company’s assets and liabilities, or
    - (ii) individually with the assets and liabilities of each of its subsidiary undertakings,
 indicating, as respects the assets and liabilities of its subsidiary undertakings, the allowance to be made for persons other than members of the company.”.
- (3) For paragraph 18 (accountants’ reports) substitute—

“18 (1) The following provisions apply if—

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- (a) the proceeds of the issue are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other undertaking, or any part of the proceeds is to be so applied, and
  - (b) by reason of that acquisition or anything to be done in consequence of or in connection with it, that undertaking will become a subsidiary undertaking of the company.
- (2) There shall be set out in the prospectus a report made by accountants upon—
- (a) the profits or losses of the other undertaking in respect of each of the five financial years immediately preceding the issue of the prospectus, and
  - (b) the assets and liabilities of the other undertaking at the last date to which its accounts were made up.
- (3) The report shall—
- (a) indicate how the profits or losses of the other undertaking would in respect of the shares to be acquired have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired, and
  - (b) where the other undertaking is a parent undertaking, deal with the profits or losses and the assets and liabilities of the undertaking and its subsidiary undertakings in the manner provided by paragraph 16(3) above in relation to the company and its subsidiary undertakings.
- (4) In this paragraph “undertaking” and “shares”, in relation to an undertaking, have the same meaning as in Part VII.”.
- (4) In paragraph 22 (eligibility of accountants to make reports), for sub-paragraph (2) substitute—
- “(2) Such a report shall not be made by an accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of—
- (a) the company or any of its subsidiary undertakings,
  - (b) a parent undertaking of the company or any subsidiary undertaking of such an undertaking.”.

20 In paragraph 12(b) of Schedule 4, for “section 238” substitute “section 233”.

- 21 (1) Schedule 11 is amended as follows.
- (2) For the heading substitute “MODIFICATIONS OF PART VIII WHERE COMPANY’S ACCOUNTS PREPARED IN ACCORDANCE WITH SPECIAL PROVISIONS FOR BANKING OR INSURANCE COMPANIES”.
- (3) In paragraphs 1 and 2(a) for “Schedule 9” substitute “Part I of Schedule 9”.
- (4) In paragraph 4—
- (a) in sub-paragraph (a) for “Schedule 9” substitute “Part I of Schedule 9”, and

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- (b) omit sub-paragraphs (b) and (c).
  - (5) In paragraph 5—
    - (a) in sub-paragraph (a) for “Part III of Schedule 9” substitute “paragraph 27 or 28 of Schedule 9”, and
    - (b) omit sub-paragraph (b).
  - (6) In paragraph 6—
    - (a) in sub-paragraph (a), for “section 228” substitute “section 226” and for “section 258 and Schedule 9” substitute “section 255 and Part I of Schedule 9”, and
    - (b) in sub-paragraph (b), for “Part III of Schedule 9” substitute “paragraph 27 or 28 of Schedule 9”.
  - (7) In paragraph 7(a) for “Schedule 9” substitute “Part I of Schedule 9”.
- 22 (1) In Schedule 15A (renumbered 15B) (provisions applicable to mergers and divisions of public companies), paragraph 6 (documents to be made available for inspection) is amended as follows.
- (2) In sub-paragraph (1)(b) (directors’ report on merger or division), after “directors’ report” insert “referred to in paragraph 4 above”.
  - (3) For sub-paragraph (1)(d) and (e) substitute—
    - “(d) the company’s annual accounts, together with the relevant directors’ report and auditors’ report, for the last three financial years ending on or before the relevant date; and
    - (e) if the last of those financial years ended more than six months before the relevant date, an accounting statement in the form described in the following provisions.”.
  - (4) In sub-paragraph (1), after the paragraphs add—
 

“In paragraphs (d) and (e) “the relevant date” means one month before the first meeting of the company summoned under section 425(1) or for the purposes of paragraph 1.”.
  - (5) For sub-paragraphs (2) to (5) substitute—
    - “(2) The accounting statement shall consist of—
      - (a) a balance sheet dealing with the state of the affairs of the company as at a date not more than three months before the draft terms were adopted by the directors, and
      - (b) where the company would be required to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and its subsidiary undertakings as at that date.
    - (3) The requirements of this Act as to balance sheets forming part of a company’s annual accounts, and the matters to be included in notes thereto, apply to any balance sheet required for the accounting statement, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.



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- (4) Any balance sheet required for the accounting statement shall be approved by the board of directors and signed on behalf of the board by a director of the company.
- (5) In relation to a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986, the references in this paragraph to the requirements of this Act shall be construed as reference to the corresponding requirements of that Order.”.
- 23 In Schedule 22 (provisions applying to unregistered companies), in the entry relating to Part VII, in column 1, for “Schedule 10” substitute “Schedules 10 and 10A”.
- 24 (1) Schedule 24 (punishment of offences) is amended as follows.
- (2) The existing entries for provisions in Part VII are amended as follows, and shall be re-ordered according to the new order of the sections in that Part:

<i>Provision of Part VII</i>	<i>Amendment</i>
223(1)	In column 1, for “223(1)” substitute “221(5) or 222(4)”.
223(2)	In column 1, for “223(2)” substitute “222(6)”.
	In column 2, for “222(4)” substitute “222(5)”.
231(3)	In column 1, for “231(3)” substitute “231(6)”.
231(4)	In column 1, for “231(4)” substitute “232(4)”.
	In column 2, for “Schedule 5, Part V” substitute “Schedule 6, Part I”.
235(7)	In column 1, for “235(7)” substitute “234(5)”.
	In column 2, for “the section” substitute “Part VII”.
238(2)	In column 1, for “238(2)” substitute “233(6)”.
240(5)	In column 1, for “240(5)” substitute “238(5)”.
	In column 2, for “company balance sheet” substitute “company’s annual accounts”.
243(1)	In column 1, for “243(1)” substitute “241(2) or 242(2)”.

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		In column 2, for “company accounts” substitute “company’s annual accounts, directors’ report and auditors’ report”.
245(1)		Omit the entry.
245(2)		Omit the entry.
246(2)		In column 1, for “246(2)” substitute “239(3)”.
		In column 2, after “accounts” insert “and reports”.
254(6)		In column 1, for “254(6)” substitute “240(6)”.
		In column 2, for the present words substitute “Failure to comply with requirements in connection with publication of accounts”.
255(5)		Omit the entry.
260(3)		Omit the entry.

(3) At the appropriate places insert the following new entries—

“233(5)	Approving defective accounts.	1. On indictment.	A fine
		2. Summary.	The statutory maximum.
234A(4)	Laying, circulating or delivering directors’ report without required signature.	Summary.	One-fifth of the statutory maximum.
236(4)	Laying, circulating or delivering auditors’ report without required signature.	Summary.	One-fifth of the statutory maximum.
251(6)	Failure to comply with requirements in relation to summary financial statements.	Summary.	One-fifth of the statutory maximum.”.

(4) In the entry for section 703(1) (failure by overseas company to comply with requirements as to accounts and reports), in column 2 for the words from “s.700” to the end substitute “requirements as to accounts and reports”.

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## PART II

### AMENDMENTS OF OTHER ENACTMENTS

#### *Betting, Gaming and Lotteries Act 1963 (c.2)*

- 25 In Schedule 2 to the Betting, Gaming and Lotteries Act 1963 (registered pool promoters), in paragraph 24(2) (duties with respect to delivery of accounts and audit) for the words from “and the following provisions” to “their report)” substitute “and sections 235(2) and 237(1) and (3) of the Companies Act 1985 (matters to be stated in auditors’ report and responsibility of auditors in preparing their report)”.

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

- 26 (1) Section 42 of the Harbours Act 1964 (accounts and reports of statutory harbour undertakers) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Where a statutory harbour undertaker is a parent undertaking with subsidiary undertakings which carry on harbour activities or any associated activities, then, it shall be the duty of the company also to prepare group accounts relating to the harbour activities and associated activities carried on by it and its subsidiary undertakings.”
- (3) In subsection (6) (application of provisions of the <sup>M7</sup>Companies Act 1985)—
- (a) in paragraph (a) for “company accounts” substitute “individual company accounts”;
- (b) in paragraph (c) omit the words “required to be attached to a company’s balance sheet”.
- (4) In subsection (9), for the definition of “holding company” and “subsidiary” substitute—
- ““parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 1985;”.

#### **Marginal Citations**

M7 1985 c. 6.

#### *Coal Industry Act 1971 (c.16)*

- 27 (1) Section 8 of the Coal Industry Act 1971 (further provisions as to accounts of British Coal Corporation) is amended as follows.
- (2) In subsections (1) and (2) for “subsidiaries” (three times) substitute “subsidiary undertakings”.
- (3) After subsection (2) insert—

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“(3) In this section “subsidiary undertaking” has the same meaning as in Part VII of the Companies Act 1985.”.

*Aircraft and Shipbuilding Industries Act 1977 (c.3)*

28 (1) Section 17 of the Aircraft and Shipbuilding Industries Act 1977 (British Shipbuilders: accounts and audit) is amended as follows.

(2) In subsection (1)(c) (duty to prepare consolidated accounts) for “subsidiaries” substitute “ subsidiary undertakings ”.

(3) In subsection (9) (copies of accounts to be sent to the Secretary of State) for “subsidiaries” substitute “ subsidiary undertakings ” and for “subsidiary” substitute “ subsidiary undertaking ”.

(4) After subsection (9) add—

“(10) In this section “subsidiary undertaking” has the same meaning as in Part VII of the Companies Act 1985.”.

*Crown Agents Act 1979 (c.43)*

29 In section 22 of the Crown Agents Act 1979 (accounts and audit), in subsection (2) (duty to prepare consolidated accounts) for “subsidiaries” (three times) substitute “subsidiary undertakings”, and at the end of that subsection add—

“In this subsection “subsidiary undertaking” has the same meaning as in Part VII of the Companies Act 1985.”.

*British Telecommunications Act 1981 (c.38)*

30 In section 75 of the British Telecommunications Act 1981 (accounts of the Post Office), in subsection (1)(c)(i) for “subsidiaries” substitute “subsidiary undertakings within the meaning of Part VII of the Companies Act 1985”.

*Transport Act 1981 (c.56)*

31 In section 11(4) of the Transport Act 1981, for “section 235” substitute “ section 234 ”.

*Iron and Steel Act 1982 (c.25)*

32 In section 24(5) of the Iron and Steel Act 1982 (meaning of “directors’ report”) for the words from “which, under section 235” to the end substitute “ which is required to be prepared under section 234 of the Companies Act 1985 ”.

*Oil and Pipelines Act 1985 (c.62)*

33 In Schedule 3 to the Oil and Pipelines Act 1985 (Oil and Pipelines Agency: financial and other provisions), in paragraph 9(2) (duty to prepare consolidated accounts) for

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“subsidiaries” (three times) substitute “ subsidiary undertakings ”, and at the end of that sub-paragraph add—

“In this sub-paragraph “subsidiary undertaking” has the same meaning as in Part VII of the Companies Act 1985.”.

*Patents, Designs and Marks Act 1986 (c.39)*

34 In Schedule 2 to the Patents, Designs and Marks Act 1986 (service marks), in paragraph 1(2) (provisions in which reference to trade mark includes service mark) for sub-paragraph (ii) substitute—

“(ii) Part I of Schedule 4 and paragraphs 5(2)(d) and 10(1)(b) and (2) of Schedule 9 (form of company balance sheets); and”.

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

35 (1) The Company Directors Disqualification Act 1986 is amended as follows.

(2) In section 3(3)(b) (default orders)—

(a) in sub-paragraph (i) for “section 244” substitute “ section 242(4) ”, and

(b) after that sub-paragraph insert—

“(ia) section 245B of that Act (order requiring preparation of revised accounts),”.

(3) In Schedule 1, for paragraph 5 substitute—

“5 The extent of the director’s responsibility for any failure by the directors of the company to comply with—

(a) section 226 or 227 of the Companies Act (duty to prepare annual accounts), or

(b) section 233 of that Act (approval and signature of accounts).”.

*Financial Services Act 1986 (c.60)*

36 (1) The Financial Services Act 1986 is amended as follows.

(2) In section 117(4) and (5), for “section 227” substitute “section 226”.

(3) In Schedule 1, for paragraph 30 substitute—

“30 (1) For the purposes of this Schedule a group shall be treated as including any body corporate in which a member of the group holds a qualifying capital interest.

(2) A qualifying capital interest means an interest in relevant shares of the body corporate which the member holds on a long-term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

(3) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.

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- (4) A holding of 20 per cent. or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.
- (5) In this paragraph “equity share capital” has the same meaning as in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986.”.

*Banking Act 1987 (c.22)*

- 37 (1) The Banking Act 1987 is amended as follows.
- (2) In section 46(2) (duties of auditor of authorised institution), in paragraph (c) for “section 236” substitute “section 235(2)” and for “section 237” substitute “section 235(3) or section 237”; and in section 46(4) (adaptation of references for Northern Ireland) for “236 and 237” substitute “235(2) and 235(3) and 237”.
  - (3) After section 105 insert—

**“105A Meaning of “related company”.**

- (1) In this Act a “related company”, in relation to an institution or the holding company of an institution, means a body corporate (other than a subsidiary) in which the institution or holding company holds a qualifying capital interest.
  - (2) A qualifying capital interest means an interest in relevant shares of the body corporate which the institution or holding company holds on a long-term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.
  - (3) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.
  - (4) A holding of 20 per cent. or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.
  - (5) In this paragraph “equity share capital” has the same meaning as in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986.”.
- (4) In section 106(1) (interpretation), for the definition of “related company” substitute—

““related company” has the meaning given by section 105A above;”.

*Income and Corporation Taxes Act 1988 (c.1)*

- 38 (1) The Income and Corporation Taxes Act 1988 is amended as follows.

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- (2) In section 180 (annual return of registered profit-related pay scheme), in subsection (3) for “section 242(3)” substitute “section 244(3)”.
- (3) In section 565(6) (conditions for exemption from provisions relating to sub-contractors in construction industry: compliance with requirements of <sup>M8</sup>Companies Act 1985), in paragraph (a) for “section 227 and 241” substitute “sections 226, 241 and 242”.

#### Marginal Citations

M8 1985 c. 6.

#### *Dartford–Thurrock Crossing Act 1988 (c.20)*

- 39 In section 33 of the Dartford–Thurrock Crossing Act 1988 (duty to lay before Parliament copies of accounts of persons appointed to levy tolls), for subsection (2) substitute—

“(2) In relation to a company “accounts” in subsection (1) means the company’s annual accounts for a financial year, together with the relevant directors’ report and the auditors’ report on those accounts.

Expressions used in this subsection have the same meaning as in Part VII of the Companies Act 1985.”.

## SCHEDULE 11

Section 30(5).

### RECOGNITION OF SUPERVISORY BODY

#### PART I

#### GRANT AND REVOCATION OF RECOGNITION

##### *Application for recognition of supervisory body*

- 1 (1) A supervisory body may apply to the Secretary of State for an order declaring it to be a recognised supervisory body for the purposes of this Part of this Act.
- (2) Any such application—
    - (a) shall be made in such manner as the Secretary of State may direct, and
    - (b) shall be accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.
  - (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
  - (4) The directions and requirements given or imposed under sub-paragraphs (2) and (3) may differ as between different applications.

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- (5) Any information to be furnished to the Secretary of State under this paragraph shall, if he so requires, be in such form or verified in such manner as he may specify.
- (6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

#### *Grant and refusal of recognition*

- 2 (1) The Secretary of State may, on an application duly made in accordance with paragraph 1 and after being furnished with all such information as he may require under that paragraph, make or refuse to make an order (a "recognition order") declaring the applicant to be a recognised supervisory body for the purposes of this Part of this Act.
- (2) The Secretary of State shall not make a recognition order unless it appears to him, from the information furnished by the body and having regard to any other information in his possession, that the requirements of Part II of this Schedule are satisfied as respects that body.
- (3) The Secretary of State may refuse to make a recognition order in respect of a body if he considers that its recognition is unnecessary having regard to the existence of one or more other bodies which maintain and enforce rules as to the appointment and conduct of company auditors and which have been or are likely to be recognised.
- (4) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect specifying which requirements in the opinion of the Secretary of State are not satisfied or stating that the application is refused on the ground mentioned in sub-paragraph (3).
- (5) A recognition order shall state the date on which it takes effect.

#### *Revocation of Recognition*

- 3 (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
  - (a) that any requirement of Part II of this Schedule is not satisfied in the case of the body to which the recognition order relates ("the recognised body"),
  - (b) that the recognised body has failed to comply with any obligation to which it is subject by virtue of this Part of this Act, or
  - (c) that the continued recognition of the body is undesirable having regard to the existence of one or more other bodies which have been or are to be recognised.
- (2) An order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than three months after the day on which the revocation order is made.
- (3) Before revoking a recognition order the Secretary of State shall give written notice of his intention to do so to the recognised body, take such steps as he considers reasonably practicable for bringing the notice to the attention of members of the body



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and publish it in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

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

## PART II

### REQUIREMENTS FOR RECOGNITION

#### Modifications etc. (not altering text)

- C1** Sch. 11 Pt. II amended (1.10.1991) by [S.I. 1991/824, regs. 1\(2\)\(a\), 11\(6\)](#); [S.I. 1991/1996, art. 2\(1\)\(a\)](#)
- C2** Sch. 11 Pt. II excluded (1.10.1991) by [S.I. 1991/824, regs. 1\(2\)\(a\), 11\(4\)](#); [S.I. 1991/1996, art. 2\(1\)\(a\)](#)  
Sch. 11 Pt. II excluded (9.2.2005) by [The European Communities \(Recognition of Professional Qualifications\) \(First General System\) Regulations 2005 \(S.I. 2005/18\), reg. 11\(4\)](#) (with reg. 3)

#### *Holding of appropriate qualification*

- 4 (1) The body must have rules to the effect that a person is not eligible for appointment as a company auditor unless—

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- (a) in the case of an individual, he holds an appropriate qualification;
  - (b) in the case of a firm—
    - (i) the individuals responsible for company audit work on behalf of the firm hold an appropriate qualification, and
    - (ii) the firm is controlled by qualified persons (see paragraph 5 below).
  - (2) This does not prevent the body from imposing more stringent requirements.
  - (3) A firm which has ceased to comply with the conditions mentioned in subparagraph (1)(b) may be permitted to remain eligible for appointment as a company auditor for a period of not more than three months.
- 5
- (1) The following provisions explain what is meant in paragraph 4(1)(b)(ii) by a firm being “controlled by qualified persons”.
  - (2) For this purpose references to a person being qualified are, in relation to an individual, to his holding an appropriate qualification, and in relation to a firm, to its being eligible for appointment as a company auditor.
  - (3) A firm shall be treated as controlled by qualified persons if, and only if—
    - (a) a majority of the members of the firm are qualified persons, and
    - (b) where the firm’s affairs are managed by a board of directors, committee or other management body, a majority of the members of that body are qualified persons or, if the body consists of two persons only, at least one of them is a qualified person.
  - (4) A majority of the members of a firm means—
    - (a) where under the firm’s constitution matters are decided upon by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters;
    - (b) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
  - (5) A majority of the members of the management body of a firm means—
    - (a) where matters are decided at meetings of the management body by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters at such meetings;
    - (b) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
  - (6) The provisions of paragraphs 5 to 11 of Schedule 10A to the Companies Act 1985 (rights to be taken into account and attribution of rights) apply for the purposes of this paragraph.

*Auditors to be fit and proper persons*

- 6
- (1) The body must have adequate rules and practices designed to ensure that the persons eligible under its rules for appointment as a company auditor are fit and proper persons to be so appointed.

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*Status: Point in time view as at 10/03/1994.*

**Changes to legislation:** Companies Act 1989 is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (2) The matters which the body may take into account for this purpose in relation to a person must include—
- (a) any matter relating to any person who is or will be employed by or associated with him for the purposes of or in connection with company audit work; and
  - (b) in the case of a body corporate, any matter relating to any director or controller of the body, to any other body corporate in the same group or to any director or controller of any such other body; and
  - (c) in the case of a partnership, any matter relating to any of the partners, any director or controller of any of the partners, any body corporate in the same group as any of the partners and any director or controller of any such other body.
- (3) In sub-paragraph (2)(b) and (c) “controller”, in relation to a body corporate, means a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 15 per cent. or more of the rights to vote on all, or substantially all, matters at general meetings of the body or another body corporate of which it is a subsidiary.

#### *Professional integrity and independence*

- 7 (1) The body must have adequate rules and practices designed to ensure—
- (a) that company audit work is conducted properly and with integrity, and
  - (b) that persons are not appointed company auditor in circumstances in which they have any interest likely to conflict with the proper conduct of the audit.
- (2) The body must also have adequate rules and practices designed to ensure that no firm is eligible under its rules for appointment as a company auditor unless the firm has arrangements to prevent—
- (a) individuals who do not hold an appropriate qualification, and
  - (b) persons who are not members of the firm,
- from being able to exert any influence over the way in which an audit is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit.

#### *Technical standards*

- 8 The body must have rules and practices as to the technical standards to be applied in company audit work and as to the manner in which those standards are to be applied in practice.

#### *Procedures for maintaining competence*

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

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### *Monitoring and enforcement*

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

VALID FROM 06/04/2005

### *Independent monitoring of audits of listed and other major companies*

- 10A (1) The body must—
- (a) participate in arrangements within paragraph 19(1), and
  - (b) have rules designed to ensure that members of the body who perform any company audit functions in respect of major audits take such steps as may be reasonably required of them to enable their performance of any such functions to be monitored by means of inspections carried out under the arrangements.
- (2) Any monitoring of such persons under the arrangements is to be regarded (so far as their performance of company audit functions in respect of major audits is concerned) as monitoring of compliance with the body's rules for the purposes of paragraph 10(1).
- (3) In this paragraph "company audit function" and "major audit" have the same meaning as in paragraph 19.

### *Membership, eligibility and discipline*

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

### *Investigation of complaints*

- 12 (1) The body must have effective arrangements for the investigation of complaints—
- (a) against persons who are eligible under its rules to be appointed company auditor, or
  - (b) against the body in respect of matters arising out of its functions as a supervisory body.

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- (2) The arrangements may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the body itself.

VALID FROM 06/04/2005

*Independent investigation for disciplinary purposes of public interest cases*

- 12A (1) The body must—
- (a) participate in arrangements within paragraph 20(1), and
  - (b) have rules and practices designed to ensure that, where the designated persons have decided that any particular disciplinary action should be taken against a member of the body following the conclusion of an investigation under such arrangements, that decision is to be treated as if it were a decision made by the body in disciplinary proceedings against the member.
- (2) In sub-paragraph (1) “the designated persons” means the persons who, under the arrangements, have the function of deciding whether (and, if so, what) disciplinary action should be taken against a member of the body in the light of an investigation carried out under the arrangements.

*Meeting of claims arising out of audit work*

- 13 (1) The body must have adequate rules or arrangements designed to ensure that persons eligible under its rules for appointment as a company auditor take such steps as may reasonably be expected of them to secure that they are able to meet claims against them arising out of company audit work.
- (2) This may be achieved by professional indemnity insurance or other appropriate arrangements.

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

- 14 The body must have rules requiring persons eligible under its rules for appointment as a company auditor to comply with any obligations imposed on them by regulations under section 35 or 36.

*Taking account of costs of compliance*

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

*Status: Point in time view as at 10/03/1994.*

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*Promotion and maintenance of standards*

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

VALID FROM 06/04/2005

**PART 3**

ARRANGEMENTS IN WHICH SUPERVISORY BODIES ARE REQUIRED TO PARTICIPATE

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

- 17 The arrangements referred to in paragraph 7(1A) are appropriate funded arrangements—
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 7(1), and
  - (b) for ensuring that the determination of those standards is done independently of the body.

*Arrangements for setting technical standards*

- 18 The arrangements referred to in paragraph 8(2) are appropriate funded arrangements—
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 8(1), and
  - (b) for ensuring that the determination of those standards is done independently of the body.

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

- 19 (1) The arrangements referred to in paragraph 10A(1) are appropriate funded arrangements—
- (a) for enabling the performance by members of the body of company audit functions in respect of major audits to be monitored by means of inspections carried out under the arrangements, and
  - (b) for ensuring that the carrying out of such monitoring and inspections is done independently of the body.
- (2) In this paragraph—
- “company audit function” means any function performed as a company auditor;
  - “major audit” means an audit conducted in respect of—
  - (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000), or

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- (b) any other company in whose financial condition there is a major public interest.

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

20 (1) The arrangements referred to in paragraph 12A(1) are appropriate funded arrangements—

- (a) for the carrying out of investigations into public interest cases arising in connection with the performance of company audit functions by members of the body,
- (b) for the holding of disciplinary hearings relating to members of the body which appear to be desirable following the conclusion of such investigations,
- (c) for requiring such hearings to be held in public except where the interests of justice otherwise require,
- (d) for the persons before whom such hearings have taken place to decide whether (and, if so, what) disciplinary action should be taken against the members to whom the hearings related, and
- (e) for ensuring that the carrying out of those investigations, the holding of those hearings, and the taking of those decisions are done independently of the body.

(2) In this paragraph—

“company audit function” means any function performed as a company auditor;

“public interest cases” means matters which raise or appear to raise important issues affecting the public interest.

*Supplementary: arrangements to operate independently of body*

21 (1) This paragraph applies for the purposes of—

- paragraph 17(b),
- paragraph 18(b),
- paragraph 19(1)(b), or
- paragraph 20(1)(e).

(2) Arrangements cannot be regarded as appropriate for the purpose of ensuring that the thing or things mentioned in that provision is or are done independently of the body unless they are designed to ensure that the body—

- (a) will have no involvement in the appointment or selection of any of the persons who are to be responsible for doing the thing or things in question, and
- (b) will not otherwise be involved in the doing of that thing or those things.

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

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*Supplementary: “funded” arrangements etc.*

- 22 (1) For the purposes of any of paragraphs 17, 18, 19 and 20, arrangements are “funded” arrangements if, in the event of their providing for the payment of costs of maintaining the arrangements, such costs are to be paid by the body in accordance with the arrangements.
- (2) Arrangements can qualify as arrangements within any of paragraphs 17, 18, 19(1) and 20(1) even though the matters for which they provide are more extensive in any respect than those mentioned in that provision.

## SCHEDULE 12

Section 32(4).

### RECOGNITION OF PROFESSIONAL QUALIFICATION

#### PART I

#### GRANT AND REVOCATION OF RECOGNITION

##### *Application for recognition of professional qualification*

- 1 (1) A qualifying body may apply to the Secretary of State for an order declaring a qualification offered by it to be a recognised professional qualification for the purposes of this Part of this Act.
- (2) Any such application—
- (a) shall be made in such manner as the Secretary of State may direct, and
  - (b) shall be accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under sub-paragraphs (2) and (3) may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.
- In the case of examination standards, the verification required may include independent moderation of the examinations over such period as the Secretary of State considers necessary.
- (6) Every application shall be accompanied by a copy of the applicant’s rules and of any guidance issued by it which is intended to have continuing effect and is issued in writing or other legible form.



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### *Grant and refusal of recognition*

- 2 (1) The Secretary of State may, on an application duly made in accordance with paragraph 1 and after being furnished with all such information as he may require under that paragraph, make or refuse to make an order (a “recognition order”) declaring the qualification in respect of which the application was made to be a recognised professional qualification for the purposes of this Part of this Act.

In this Part of this Act a “recognised qualifying body” means a qualifying body offering a recognised professional qualification.

- (2) The Secretary of State shall not make a recognition order unless it appears to him, from the information furnished by the applicant and having regard to any other information in his possession, that the requirements of Part II of this Schedule are satisfied as respects the qualification.
- (3) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect specifying which requirements, in his opinion, are not satisfied.
- (4) A recognition order shall state the date on which it takes effect.

### *Revocation of recognition*

- 3 (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
- (a) that any requirement of Part II of this Schedule is not satisfied in relation to the qualification to which the recognition order relates, or
  - (b) that the qualifying body has failed to comply with any obligation to which it is subject by virtue of this Part of this Act.
- (2) An order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than three months after the day on which the revocation order is made.
- (3) Before revoking a recognition order the Secretary of State shall give written notice of his intention to do so to the qualifying body, take such steps as he considers reasonably practicable for bringing the notice to the attention of persons holding the qualification or in the course of studying for it and publish it in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.
- (4) A notice under sub-paragraph (3) shall state the reasons for which the Secretary of State proposes to act and give particulars of the rights conferred by sub-paragraph (5).
- (5) A body on which a notice is served under sub-paragraph (3), any person holding the qualification or in the course of studying for it and any other person who appears to the Secretary of State to be affected may within three months after the date of service or publication, or within such longer time as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State; and the Secretary of State shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.

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- (6) If in any case the Secretary of State considers it essential to do so in the public interest he may revoke a recognition order without regard to the restriction imposed by sub-paragraph (2) and notwithstanding that no notice has been given or published under sub-paragraph (3) or that the time for making representations in pursuance of such a notice has not expired.
- (7) An order revoking a recognition order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.
- (8) A recognition order may be revoked at the request or with the consent of the qualifying body and any such revocation shall not be subject to the restrictions imposed by sub-paragraphs (1) and (2) or the requirements of sub-paragraphs (3) to (5).
- (9) On making an order revoking a recognition order the Secretary of State shall give the qualifying body written notice of the making of the order, take such steps as he considers reasonably practicable for bringing the making of the order to the attention of persons holding the qualification or in the course of studying for it and publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

## PART II

### REQUIREMENTS FOR RECOGNITION

#### *Entry requirements*

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

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### *Course of theoretical instruction*

- 5 The qualification must be restricted to persons who have completed a course of theoretical instruction in the subjects prescribed for the purposes of paragraph 7 or have a sufficient period of professional experience.

### *Sufficient period of professional experience*

- 6 (1) The references in paragraphs 4 and 5 to a sufficient period of professional experience are to not less than seven years' experience in a professional capacity in the fields of finance, law and accountancy.
- (2) Periods of theoretical instruction in the fields of finance, law and accountancy may be deducted from the required period of professional experience, provided the instruction—
- (a) lasted at least one year, and
  - (b) is attested by an examination recognised by the Secretary of State for the purposes of this paragraph;
- but the period of professional experience may not be so reduced by more than four years.
- (3) The period of professional experience together with the practical training required in the case of persons satisfying the requirement in paragraph 5 by virtue of having a sufficient period of professional experience must not be shorter than the course of theoretical instruction referred to in that paragraph and the practical training required in the case of persons satisfying the requirement of that paragraph by virtue of having completed such a course.

### *Examination*

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

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- (4) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Practical training*

- 8 (1) The qualification must be restricted to persons who have completed at least three years' practical training of which—
- (a) part was spent being trained in company audit work, and
  - (b) a substantial part was spent being trained in company audit work or other audit work of a description approved by the Secretary of State as being similar to company audit work.

For this purpose “company audit work” includes the work of a person appointed as auditor under the <sup>M9</sup>Companies (Northern Ireland) Order 1986 or under the law of a country or territory outside the United Kingdom where it appears to the Secretary of State that the law and practice with respect to the audit of company accounts is similar to that in the United Kingdom.

- (2) The training must be given by persons approved by the body offering the qualification as persons as to whom the body is satisfied, in the light of undertakings given by them and the supervision to which they are subject (whether by the body itself or some other body or organisation), that they will provide adequate training.
- (3) At least two-thirds of the training must be given by a fully-qualified auditor, that is, a person—
  - (a) eligible in accordance with this Part of this Act to be appointed as a company auditor, or
  - (b) satisfying the corresponding requirements of the law of Northern Ireland or another member State of the European Economic Community.

**Marginal Citations**

**M9** [S.I. 1986/1032 \(N.I. 6\)](#).

*The body offering the qualification*

- 9 (1) The body offering the qualification must have—
- (a) rules and arrangements adequate to ensure compliance with the requirements of paragraphs 4 to 8, and
  - (b) adequate arrangements for the effective monitoring of its continued compliance with those requirements.
- (2) The arrangements must include arrangements for monitoring the standard of its examinations and the adequacy of the practical training given by the persons approved by it for that purpose.

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VALID FROM 01/01/2005

SCHEDULE 13

Section 46(6).

SUPPLEMENTARY PROVISIONS WITH RESPECT TO DELEGATION ORDER

SCHEDULE 14

Section 47(1).

SUPERVISORY AND QUALIFYING BODIES: RESTRICTIVE PRACTICES

[<sup>F3</sup>PART I

PREVENTION OF RESTRICTIVE PRACTICES

**Textual Amendments**

- F3** Sch. 14 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, **Sch. 2 para. 2(2)** (with reg. 6(2))

*Refusal of recognition on grounds related to competition]*

- 1 (1) The Secretary of State shall before deciding whether to make a recognition order in respect of a supervisory body or professional qualification send to the Director General of Fair Trading (in this Schedule referred to as “the Director”) a copy of the rules and of any guidance which the Secretary of State is required to consider in making that decision together with such other information as the Secretary of State considers will assist the Director.
- (2) The Director shall consider whether the rules or guidance have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, and shall report to the Secretary of State; and the Secretary of State shall have regard to his report in deciding whether to make a recognition order.
- (3) The Secretary of State shall not make a recognition order if it appears to him that the rules and any guidance of which copies are furnished with the application have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, unless it appears to him that the effect is reasonably justifiable having regard to the purposes of this Part of this Act.

*Notification of changes to rules or guidance*

- 2 (1) Where a recognised supervisory or qualifying body amends, revokes or adds to its rules or guidance in a manner which may reasonably be regarded as likely—

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- (a) to restrict, distort or prevent competition to any significant extent, or
- (b) otherwise to affect the question whether the recognition order granted to the body should continue in force,

it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition.

- (2) Notice need not be given under sub-paragraph (1) of the revocation of guidance not intended to have continuing effect or issued otherwise than in writing or other legible form, or of any amendment or addition to guidance which does not result in or consist of guidance which is intended to have continuing effect and is issued in writing or other legible form.

*Continuing scrutiny by the Director General of Fair Trading*

- 3 (1) The Director shall keep under review the rules made or guidance issued by a recognised supervisory or qualifying body, and if he is of the opinion that any rules or guidance of such a body have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, he shall report his opinion to the Secretary of State, stating what in his opinion the effect is or is likely to be.
- (2) The Secretary of State shall send to the Director copies of any notice received by him under paragraph 2, together with such other information as he considers will assist the Director.
- (3) The Director may report to the Secretary of State his opinion that any matter mentioned in such a notice does not have, and is not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition.
- (4) The Director may from time to time consider whether—
  - (a) any practices of a recognised supervisory or qualifying body in its capacity as such, or
  - (b) any relevant practices required or contemplated by the rules or guidance of such a body or otherwise attributable to its conduct in its capacity as such, have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Secretary of State stating his opinion and what the effect is or is likely to be.
- (5) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised supervisory body are practices engaged in for the purposes of, or in connection with, appointment as a company auditor or the conduct of company audit work by persons who—
  - (a) are eligible under its rules for appointment as a company auditor, or
  - (b) hold an appropriate qualification and are directors or other officers of bodies corporate which are so eligible or partners in, or employees of, partnerships which are so eligible.
- (6) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised qualifying body are—
  - (a) practices engaged in by persons in the course of seeking to obtain a recognised professional qualification from that body, and

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- (b) practices engaged in by persons approved by the body for the purposes of giving practical training to persons seeking such a qualification and which relate to such training.

#### *Investigatory powers of the Director*

- 4 (1) The following powers are exercisable by the Director for the purpose of investigating any matter in connection with his functions under paragraph 1 or 3.
- (2) The Director may by a notice in writing require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation.
- (3) The Director may by a notice in writing require any person to furnish to the Director such information as may be specified or described in the notice, and specify the time within which and the manner and form in which any such information is to be furnished.
- (4) A person shall not under this paragraph be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on the grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.
- (5) Subsections (6) to (8) of section 85 of the <sup>M10</sup>Fair Trading Act 1973 (enforcement provisions) apply in relation to a notice under this paragraph as they apply in relation to a notice under subsection (1) of that section but as if, in subsection (7) of that section, for the words from “any one” to “the Commission” there were substituted “the Director”.

#### **Marginal Citations**

**M10** 1973 c. 41.

VALID FROM 01/04/2003

#### *Enforcement*

- [<sup>F4</sup>4A (1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under paragraph 4.
- (2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.

*Status: Point in time view as at 10/03/1994.*

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- (4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 4.
- (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.
- (7) In this section “the court”—
  - (a) in relation to England and Wales, means the High Court, and
  - (b) in relation to Scotland, means the Court of Session.]

#### Textual Amendments

- F4** Sch. 14 para. 4A inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(d); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

VALID FROM 01/04/2003

- F5** 4B (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 4.
- (2) A person who commits an offence under sub-paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### Textual Amendments

- F5** Sch. 14 para. 4B inserted (1.4.2003) by 2002 c. 40, s. 278, Sch. 25 para. 21(4)(d); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

### *Publication of Director’s reports*

- 5 (1) The Director may, if he thinks fit, publish any report made by him under paragraph 1 or 3.
- (2) He shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the supervisory or qualifying body concerned) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.



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*Powers exercisable by the Secretary of State in consequence of report*

- 6 (1) The powers conferred by this section are exercisable by the Secretary of State if, having received and considered a report from the Director under paragraph 3(1) or (4), it appears to him that—
- (a) any rules made or guidance issued by a recognised supervisory or qualifying body, or
  - (b) any such practices as are mentioned in paragraph 3(4),
- have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is reasonably justifiable having regard to the purposes of this Part of this Act.
- (2) The powers are—
- (a) to revoke the recognition order granted to the body concerned,
  - (b) to direct it to take specified steps for the purpose of securing that the rules, guidance or practices in question do not have the effect mentioned in sub-paragraph (1), and
  - (c) to make alterations in the rules of the body for that purpose.
- (3) The provisions of paragraph 3(2) to (5), (7) and (9) of Schedule 11 or, as the case may be, Schedule 12 have effect in relation to the revocation of a recognition order under sub-paragraph (2)(a) above as they have effect in relation to the revocation of such an order under that Schedule.
- (4) Before the Secretary of State exercises the power conferred by sub-paragraph (2)(b) or (c) above he shall—
- (a) give written notice of his intention to do so to the body concerned and take such steps (whether by publication or otherwise) as he thinks appropriate for bringing the notice to the attention of any other person who in his opinion is likely to be affected by the exercise of the power, and
  - (b) have regard to any representation made within such time as he considers reasonable by the body or any such other person.
- (5) A notice under sub-paragraph (4) shall give particulars of the manner in which the Secretary of State proposes to exercise the power in question and state the reasons for which he proposes to act; and the statement of reasons may include matters contained in any report received by him under paragraph 4.

*Supplementary provisions*

- 7 (1) A direction under paragraph 6 is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the <sup>M11</sup>Court of Session Act 1988.
- (2) The fact that any rules made by a recognised supervisory or qualifying body have been altered by the Secretary of State, or pursuant to a direction of the Secretary of State, under paragraph 6 does not preclude their subsequent alteration or revocation by that body.

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- (3) In determining for the purposes of this Part of this Schedule whether any guidance has, or is likely to have, any particular effect the Secretary of State and the Director may assume that the persons to whom it is addressed will act in conformity with it.

**Marginal Citations**

**M11** 1988 c. 36.

**PART II**

CONSEQUENTIAL EXEMPTIONS FROM COMPETITION LAW

*Fair Trading Act 1973 (c. 41)*

- 8 (1) For the purpose of determining whether a monopoly situation within the meaning of the Fair Trading Act 1973 exists by reason of the circumstances mentioned in section 7(1)(c) of that Act (supply of services by or for group of two or more persons), no account shall be taken of—
- (a) the rules of or guidance issued by a recognised supervisory or qualifying body, or
  - (b) conduct constituting such a practice as is mentioned in paragraph 3(4) above.
- (2) Where a recognition order is revoked there shall be disregarded for the purpose mentioned in sub-paragraph (1) any such conduct as is mentioned in that sub-paragraph which occurred while the order was in force.
- (3) Where on a monopoly reference under section 50 or 51 of the Fair Trading Act 1973 falling within section 49 of that Act (monopoly reference not limited to the facts) the Monopolies and Mergers Commission find that a monopoly situation within the meaning of that Act exists and—
- (a) that the person (or, if more than one, any of the persons) in whose favour it exists is—
    - (i) a recognised supervisory or qualifying body, or
    - (ii) a person of a description mentioned in paragraph 3(5) or (6) above, or
  - (b) that any such person's conduct in doing anything to which the rules of such a body relate is subject to guidance issued by the body,
- the Commission in making their report on that reference shall exclude from their consideration the question whether the rules or guidance of the body concerned, or the acts or omissions of that body in its capacity as such, operate or may be expected to operate against the public interest.

*Restrictive Trade Practices Act 1976 (c. 34)*

- 9 (1) The Restrictive Trade Practices Act 1976 does not apply to an agreement for the constitution of a recognised supervisory or qualifying body in so far as it relates to rules of or guidance issued by the body, and incidental matters connected therewith,

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- including any term deemed to be contained in it by virtue of section 8(2) or 16(3) of that Act.
- (2) Nor does that Act apply to an agreement the parties to which consist of or include—
- (a) a recognised supervisory or qualifying body, or
  - (b) any such person as is mentioned in paragraph 3(5) or (6) above,
- by reason that it includes any terms the inclusion of which is required or contemplated by the rules or guidance of that body.
- (3) Where an agreement ceases by virtue of this paragraph to be subject to registration—
- (a) the Director shall remove from the register maintained by him under the Act of 1976 any particulars which are entered or filed in that register in respect of the agreement, and
  - (b) any proceedings in respect of the agreement which are pending before the Restrictive Practices Court shall be discontinued.
- (4) Where a recognition order is revoked, sub-paragraphs (1) and (2) above shall continue to apply for a period of six months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) Where an agreement which has been exempt from registration by virtue of this paragraph ceases to be exempt in consequence of the revocation of a recognition order, the time within which particulars of the agreement are to be furnished in accordance with section 24 of and Schedule 2 to the Act of 1976 shall be the period of one month beginning with the day on which the agreement ceased to be exempt from registration.
- (6) Where in the case of an agreement registered under the 1976 Act a term ceases to fall within sub-paragraph (2) above in consequence of the revocation of a recognition order and particulars of that terms have not previously been furnished to the Director under section 24 of that Act, those particulars shall be furnished to him within the period of one month beginning with the day on which the term ceased to fall within that sub-paragraph.

*Competition Act 1980 (c. 21)*

- 10 (1) No course of conduct constituting any such practice as is mentioned in paragraph 3(4) above shall constitute an anti-competitive practice for the purposes of the Competition Act 1980.
- (2) Where a recognition order is revoked there shall not be treated as an anti-competitive practice for the purposes of that Act any such course of conduct as is mentioned in sub-paragraph (1) which occurred while the order was in force.

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VALID FROM 01/10/2009

SCHEDULE 15 **E+W+S**

Section 105.

## CHARGES ON PROPERTY OF OVERSEA COMPANIES

The following provisions are inserted in Part XXIII of the <sup>M12</sup>Companies Act 1985—

**Marginal Citations**

M12 1985 c. 6.

**“CHAPTER III**

## REGISTRATION OF CHARGES

**Introductory provisions.**

- 703A) The provisions of this Chapter have effect for securing the registration in Great Britain of charges on the property of a registered overseas company.
- (2) Section 395(2) and (3) (meaning of “charge” and “property”) have effect for the purposes of this Chapter.
- (3) A “registered overseas company”, in relation to England and Wales or Scotland, means an overseas company which
- [<sup>F6</sup>(a) has duly delivered documents under paragraph 1 of Schedule 21A to the registrar for that part of Great Britain and has not subsequently given notice to him under section 695A(3) that it has closed the branch in respect of which the documents were registered, or
- (b) has duly delivered documents to the registrar for that part of Great Britain under section 691 and has not subsequently given notice to him under section 696(4) that it has ceased to have an established place of business in that part.]
- (4) References in this Chapter to the registrar shall be construed in accordance with section 703E below and references to registration, in relation to a charge, are to registration in the register kept by him under this Chapter.

**Charges requiring registration.**

- 703B) The charges requiring registration under this Chapter are those which if created by a company registered in Great Britain would require registration under Part XII of this Act.
- (2) Whether a charge is one requiring registration under this Chapter shall be determined—
- [<sup>F7</sup>(a) in the case of a charge over property of a company at the date when it becomes a registered overseas company, as at that date,]

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- (b) in the case of a charge created by a registered overseas company, as at the date the charge is created, and
  - (c) in the case of a charge over property acquired by a registered overseas company, as at the date of the acquisition.
- (3) In the following provisions of this Chapter references to a charge are, unless the context otherwise requires, to a charge requiring registration under this Chapter.

Where a charge not otherwise requiring registration relates to property by virtue of which it requires to be registered and to other property, the references are to the charge so far as it relates to property of the former description.

### **The register.**

- 703(1) The registrar shall keep for each registered overseas company a register, in such form as he thinks fit, of charges on property of the company.
- (2) The register shall consist of a file containing with respect to each such charge the particulars and other information delivered to the registrar under or by virtue of the following provisions of this Chapter.
  - (3) Section 397(3) to (5) (registrar's certificate as to date of delivery of particulars) applies in relation to the delivery of any particulars or other information under this Chapter.

### **Company's duty to deliver particulars of charges for registration.**

- 703(1) If when an overseas company
- [<sup>F8</sup>(a) delivers documents for registration under paragraph 1 of Schedule 21A—
    - (i) in respect of a branch in England and Wales, or
    - (ii) in respect of a branch in Scotland,for the first time since becoming a company to which section 690A applies, or
  - (b) delivers documents for registration under section 691,]
- any of its property is situated in Great Britain and subject to a charge, it is the company's duty at the same time to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.

- [<sup>F9</sup>(1A) Subsection (1) above does not apply in relation to a charge if—
- (a) the particulars of it required to be delivered under that subsection have already been so delivered to the registrar to whom the documents mentioned in subsection (1) above are delivered, and
  - (b) the company has at all times since they were so delivered to him been a registered overseas company in relation to the part of Great Britain for which he is registrar.]
- (2) Where a registered overseas company—
- (a) creates a charge on property situated in Great Britain, or
  - (b) acquires property which is situated in Great Britain and subject to a charge,
- it is the company's duty to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration within 21 days after the date of the charge's creation or, as the case may be, the date of the acquisition.

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This subsection does not apply if the property subject to the charge is at the end of that period no longer situated in Great Britain.

- (3) Where the preceding subsections do not apply and property of a registered overseas company is for a continuous period of four months situated in Great Britain and subject to a charge, it is the company's duty before the end of that period to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration.
- (4) Particulars of a charge required to be delivered under subsections (1), (2) or (3) may be delivered for registration by any person interested in the charge.
- (5) If a company fails to comply with subsection (1), (2) or (3), then, unless particulars of the charge have been delivered for registration by another person, the company and every officer of it who is in default is liable to a fine.
- (6) Section 398(2), (4) and (5) (recovery of fees paid in connection with registration, filing of particulars in register and sending of copy of particulars filed and note as to date) apply in relation to particulars delivered under this Chapter.

#### **Registrar to whom particulars, &c. to be delivered.**

- 703E) The particulars required to be delivered by section 703D(1) (charges over property of overseas company becoming registered in a part of Great Britain) shall be delivered to the registrar to whom the documents are delivered under [F10] paragraph 1 of Schedule 21A or, as the case may be,] section 691.
- (2) The particulars required to be delivered by section 703D(2) or (3) (charges over property of registered overseas company) shall be delivered—
  - [F11(a) where the company is a company to which section 690A applies—
    - (i) if it has registered a branch in one part of Great Britain but has not registered a branch in the other, to the registrar for the part in which it has registered a branch,
    - (ii) if it has registered a branch in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part, and
    - (iii) in any other case, to the registrars for both parts of Great Britain; and
  - (b) where the company is a company to which section 691 applies—
    - (i) if it is registered in one part of Great Britain and not in the other, to the registrar for the part in which it is registered,
    - (ii) if it is registered in both parts of Great Britain but the property subject to the charge is situated in one part of Great Britain only, to the registrar for that part, and
    - (iii) in any other case, to the registrar for both parts of Great Britain.]
- (3) Other documents required or authorised by virtue of this Chapter to be delivered to the registrar shall be delivered to the registrar or registrars to whom particulars of the charge to which they relate have been, or ought to have been, delivered.
- (4) [F12] If a company ceases to be a registered overseas company in relation to either part of Great Britain, charges over property of the company shall cease to be subject to the provisions of this Chapter, as regards registration in that part of Great Britain,

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as from the date on which the notice under section 695A(3) or, as the case may be, 696(3) is given.],

This is without prejudice to rights arising by reason of events occurring before that date.

#### **Effect of failure to deliver particulars, late delivery and effect of errors and omissions.**

703(F) The following provisions of Part XII—

- (a) section 399 (effect of failure to deliver particulars),
- (b) section 400 (late delivery of particulars), and
- (c) section 402 (effect of errors and omissions in particulars delivered),

apply, with the following modifications, in relation to a charge created by a registered overseas company of which particulars are required to be delivered under this Chapter.

- (2) Those provisions do not apply to a charge of which particulars are required to be delivered under section 703D(1) (charges existing when company delivers documents under section 691).
- (3) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the references to the period of 21 days after the charge's creation shall be construed as references to the period of four months referred to in that subsection.

#### **Delivery of further particulars or memorandum.**

703G Sections 401 and 403 (delivery of further particulars and memorandum of charge ceasing to affect company's property) apply in relation to a charge of which particulars have been delivered under this Chapter.

#### **Further provisions with respect to voidness of charges.**

703(H) The following provisions of Part XII apply in relation to the voidness of a charge by virtue of this Chapter—

- (a) section 404 (exclusion of voidness as against unregistered charges),
- (b) section 405 (restrictions on cases in which charge is void),
- (c) section 406 (effect of exercise of power of sale), and
- (d) section 407 (effect of voidness on obligation secured).

- (2) In relation to a charge of which particulars are required to be delivered under section 703D(3) (charges registrable by virtue of property being within Great Britain for requisite period), the reference in section 404 to the period of 21 days after the charge's creation shall be construed as a reference to the period of four months referred to in that subsection.

#### **Additional information to be registered.**

703(I) Section 408 (particulars of taking up of issue of debentures) applies in relation to a charge of which particulars have been delivered under this Chapter.

- (2) Section 409 (notice of appointment of receiver or manager) applies in relation to the appointment of a receiver or manager of property of a registered overseas company.



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- (3) Regulations under section 410 (notice of crystallisation of floating charge, &c.) may apply in relation to a charge of which particulars have been delivered under this Chapter; but subject to such exceptions, adaptations and modifications as may be specified in the regulations.

**Copies of instruments and register to be kept by company.**

- 703J Sections 411 and 412 (copies of instruments and register to be kept by company) apply in relation to a registered overseas company and any charge over property of the company situated in Great Britain.
- (2) They apply to any charge, whether or not particulars are required to be delivered to the registrar.
- (3) In relation to such a company the references to the company's registered office shall be construed as references to its principal place of business in Great Britain.

**Power to make further provision by regulations.**

- 703K The Secretary of State may by regulations make further provision as to the application of the provisions of this Chapter, or the provisions of Part XII applied by this Chapter, in relation to charges of any description specified in the regulations.
- (2) The regulations may apply any provisions of regulations made under section 413 (power to make further provision with respect to application of Part XII) or make any provision which may be made under that section with respect to the application of provisions of Part XII.

**Provisions as to situation of property.**

- 703L The following provisions apply for determining for the purposes of this Chapter whether a vehicle which is the property of an overseas company is situated in Great Britain—
- (a) a ship, aircraft or hovercraft shall be regarded as situated in Great Britain if, and only if, it is registered in Great Britain;
- (b) any other description of vehicle shall be regarded as situated in Great Britain on a day if, and only if, at any time on that day the management of the vehicle is directed from a place of business of the company in Great Britain;
- and for the purposes of this Chapter a vehicle shall not be regarded as situated in one part of Great Britain only.
- (2) For the purposes of this Chapter as it applies to a charge on future property, the subject-matter of the charge shall be treated as situated in Great Britain unless it relates exclusively to property of a kind which cannot, after being acquired or coming into existence, be situated in Great Britain; and references to property situated in a part of Great Britain shall be similarly construed.

**Other supplementary provisions.**

- 703M The following provisions of Part XII apply for the purposes of this Chapter—
- (a) section 414 (construction of references to date of creation of charge),
- (b) section 415 (prescribed particulars and related expressions),



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- (c) section 416 (notice of matters disclosed on the register),
- (d) section 417 (power of court to dispense with signature),
- (e) section 418 (regulations) and
- (f) section 419 (minor definitions).

**Index of defined expressions.**

703N The following Table shows the provisions of this Chapter and Part XII defining or otherwise explaining expressions used in this Chapter (other than expressions used only in the same section)—

**Textual Amendments**

- F6** Sch. 15: words inserted in s. 703A(3) (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para.12.
- F7** Sch. 15: s. 703B(2)(a) substituted (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para. 13
- F8** Sch. 15: words in s. 703D(1) substituted (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para. 14(2)
- F9** Sch. 15: s. 703D(1A) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para. 14(3)
- F10** Sch. 15: words in s. 703E(1) inserted (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para. 15(2)
- F11** Sch. 15: words in s. 703E(2) substituted (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para. 15(3)
- F12** Sch. 15: words in s. 703E(4) substituted (1.1.1993) by S.I. 1992/3179, reg. 4, Sch. 3 para. 15(4)

PROSPECTIVE

<sup>F13</sup>SCHEDULE 16

Section 107.

AMENDMENTS CONSEQUENTIAL ON PART IV

**Textual Amendments**

- F13** Sch. 16 repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2)

<sup>F13</sup> Land Charges Act 1972 (c. 61)

<sup>F13</sup><sub>1</sub> .....

<sup>F13</sup> Companies Act 1985 (c. 6)

<sup>F13</sup><sub>1A</sub> .....

<sup>F13</sup><sub>2</sub> .....

<sup>F13</sup> Insolvency Act 1986 (c. 45)

<sup>F13</sup><sub>3</sub> .....

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*F13 Company Directors Disqualification Act 1986 (c. 46)*

**F13**<sup>4</sup> .....

SCHEDULE 17

Section 130(7).

COMPANY CONTRACTS, SEALS, &C.: FURTHER PROVISIONS

*Execution of deeds abroad*

- 1 (1) Section 38 of the <sup>M13</sup>Companies Act 1985 (execution of deeds abroad) is amended as follows.
- (2) ..... <sup>F14</sup>
- (3) For subsection (2) (effect of deed executed by attorney) substitute—
- “(2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company’s common seal.”.

**Textual Amendments**

**F14** Sch. 17 paras. 1(2), 2(4), 8, 10 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27; 68A:2; 76:2), s. 74(2), **Sch. 9**

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**Marginal Citations**

**M13** 1985 c. 6.

*Official seal for use abroad*

- 2 (1) Section 39 of the Companies Act 1985 (power to have official seal for use abroad) is amended as follows.
- (2) In subsection (1), after “A company” insert “which has a common seal” and for “the common seal of the company” substitute “its common seal”.
- (3) For subsection (2) (effect of sealing with official seal) substitute—
- “(2) The official seal when duly affixed to a document has the same effect as the company’s common seal.”.
- (4) ..... <sup>F15</sup>

**Textual Amendments**

**F15** Sch. 17 paras. 1(2), 2(4), 8, 10 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 27; 68A:2; 76:2), s. 74(2), **Sch. 9**

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*Official seal for share certificates, &c.*

- 3 (1) Section 40 of the <sup>M14</sup>Companies Act 1985 (official seal for share certificates, &c.) is amended as follows.
- (2) After “A company” insert “which has a common seal” and for “the company’s common seal” substitute “its common seal”.
- (3) At the end add—

“The official seal when duly affixed to a document has the same effect as the company’s common seal.”.

**Marginal Citations**

**M14** 1985 c. 6.

*Authentication of documents*

- 4 In section 41 of the Companies Act 1985 (authentication of documents), for the words from “may be signed” to the end substitute “is sufficiently authenticated for the purposes of the law of England and Wales by the signature of a director, secretary or other authorised officer of the company.”.

*Share certificate as evidence of title*

- 5 For section 186 of the Companies Act 1985 (certificate to be evidence of title) substitute—

**“186 Certificate to be evidence of title.**

- (1) A certificate under the common seal of the company (or, in the case of a company registered in Scotland, subscribed in accordance with section 36B) specifying any shares held by a member is—
- (a) in England and Wales, prima facie evidence, and
  - (b) in Scotland, sufficient evidence unless the contrary is shown, of his title to the shares.”.

*Share warrants to bearer*

- 6 For section 188 of the Companies Act 1985 (issue and effect of share warrant to bearer) substitute—

**“188 Issue and effect of share warrant to bearer.**

- (1) A company limited by shares may, if so authorised by its articles, issue with respect to any fully paid shares a warrant (a “share warrant”) stating that the bearer of the warrant is entitled to the shares specified in it.

*Status: Point in time view as at 10/03/1994.*

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- (2) A share warrant issued under the company’s common seal (or, in the case of a company registered in Scotland, subscribed in accordance with section 36B) entitles the bearer to the shares specified in it; and the shares may be transferred by delivery of the warrant.
- (3) A company which issues a share warrant may, if so authorised by its articles, provide (by coupons or otherwise) for the payment of the future dividends on the shares included in the warrant.”.

*Identification of company on common seal*

7 In section 350 of the <sup>M15</sup>Companies Act 1985 (identification of company on company seal), for subsection (1) substitute—

“(1) A company which has a common seal shall have its name engraved in legible characters on the seal; and if it fails to comply with this subsection it is liable to a fine.”.

**Marginal Citations**

M15 1985 c. 6.

*Floating charges under Scots law*

8 ..... F16

**Textual Amendments**

F16 Sch. 17 paras. 1(2), 2(4), 8, 10 repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 27; 68A:2; 76:2), s. 74(2), **Sch. 9**

9 In section 466(2) of the Companies Act 1985 (execution of instrument altering floating charge)—

- (a) at the beginning of the subsection insert “Without prejudice to any enactment or rule of law regarding the execution of documents,”;
- (b) omit paragraph (a);
- (c) at the end of paragraph (b) insert “; or”, and
- (d) omit paragraph (d) and the word “or” preceding it.

10 ..... F17

**Textual Amendments**

F17 Sch. 17 paras. 1(2), 2(4), 8, 10 repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 27; 68A:2; 76:2), s. 74(2), **Sch. 9**

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*Status: Point in time view as at 10/03/1994.*

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## SCHEDULE 18

Section 144(4).

## “SUBSIDIARY” AND RELATED EXPRESSIONS: CONSEQUENTIAL AMENDMENTS AND SAVINGS

*Coal Industry Nationalisation Act 1946 (c. 59)*

- 1 In Schedule 2A to the Coal Industry Nationalisation Act 1946 (eligibility for superannuation benefits), in the definition of “subsidiary” in paragraph 5 of the Table, for “section 154 of the Companies Act 1948” substitute “section 736 of the Companies Act 1985”.

*Electricity Act 1947 (c. 54)*

- 2 In section 67 of the Electricity Act 1947 (interpretation)—
- (a) in the definition of “holding company” for “the definition contained in the Companies Act 1947” substitute “section 736 of the Companies Act 1985”, and
  - (b) in the definition of “subsidiary company” for “the Companies Act 1947” substitute “section 736 of the Companies Act 1985”.

*Landlord and Tenant Act 1954 (c. 56)*

- 3 In section 42 of the Landlord and Tenant Act 1954 (groups of companies), in subsection (1) for “the same meaning as is assigned to it for the purposes of the Companies Act 1985 by section 736 of that Act” substitute “the meaning given by section 736 of the Companies Act 1985”.

*Transport Act 1962 (c. 46)*

- 4 In the Transport Act 1946, in the definition of “subsidiary” in section 92(1) (interpretation) omit the words “(taking references in that section to a company as being references to a body corporate)”.

*Harbours Act 1964 (c. 40)*

- 5 In section 57(1) of the Harbours Act 1964 (interpretation), in the definition of “marine work” for “section 154 of the Companies Act 1948” substitute “section 736 of the Companies Act 1985”.

*General Rate Act 1967 (c. 9)*

- 6 In section 32A of the General Rate Act 1967 (rateable premises of Transport Boards), in the definition of “subsidiary” in subsection (6) omit the words “(taking references in that section to a company as being references to a body corporate)”.

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*Transport Act 1968 (c. 73)*

- 7 For the purposes of Part V of the Transport Act 1968 (licensing of road haulage operators) as it applies in relation to licences granted before the commencement of section 144(1), the expression “subsidiary” has the meaning given by section 736 of the <sup>M16</sup>Companies Act 1985 as originally enacted.

**Marginal Citations**

**M16** 1985 c. 6.

*Post Office Act 1969 (c. 48)*

- 8 In section 86 of the Post Office Act 1969 (interpretation), in subsection (2) for “736(5)(b)” substitute “ 736 ”.

*Industry Act 1972 (c. 63)*

- 9 In section 10 of the Industry Act 1972 (construction credits), in subsection (9) for “for the purposes of the Companies Act 1985 by section 736 of that Act” substitute “by section 736 of the Companies Act 1985 ”.

*Coal Industry Act 1973 (c. 8)*

- 10 In section 12(1) of the Coal Industry Act 1973 (interpretation) for the definition of “subsidiary” and “wholly-owned subsidiary” substitute—

““subsidiary” and “wholly-owned subsidiary” have the meanings given by section 736 of the Companies Act 1985;”.

*Industry Act 1975 (c. 68)*

- 11 In section 37(1) of the Industry Act 1975 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “section 736”.

*Scottish Development Agency Act 1975 (c. 69)*

- [<sup>F18</sup>12 In section 25(1) of the Scottish Development Agency Act 1975 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “ section 736 ”.]

**Textual Amendments**

**F18** Sch. 18 para. 12 repealed (1.4.1991) by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\)](#), s. 38(2), [Sch. 5 Part I](#)

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*Status: Point in time view as at 10/03/1994.*

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*Welsh Development Agency Act 1975 (c. 70)*

- 13 In section 27(1) of the Welsh Development Agency Act 1975 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “section 736”.

*Restrictive Trade Practices Act 1976 (c. 41)*

- 14 (1) This paragraph applies to agreements (within the meaning of the Restrictive Trade Practices Act 1976) made before the commencement of section 144(1); and “registrable” means subject to registration under that Act.
- (2) An agreement which was not registrable before the commencement of section 144(1) shall not be treated as registrable afterwards by reason only of that provision having come into force; and an agreement which was registrable before the commencement of that provision shall not cease to be registrable by reason of that provision coming into force.

*Industrial Common Ownership Act 1976 (c. 78)*

- 15 In section 2(5) of the Industrial Common Ownership Act 1976 (common ownership and co-operative enterprises) for “for the purposes of the Companies Act 1985” substitute “as defined by section 736 of the Companies Act 1985 or for the purposes of”.

*Aircraft and Shipbuilding Industries Act 1977 (c. 3)*

- 16 In section 56(1) of the Aircraft and Shipbuilding Industries Act 1977 (interpretation), in the definition of “subsidiary” for “the same meaning as in” substitute “the meaning given by section 736 of”.

*Nuclear Industry (Finance) Act 1977 (c. 7)*

- 17 In section 3 of the Nuclear Industry (Finance) Act 1977 (expenditure on acquisition of shares in National Nuclear Corporation Ltd and subsidiaries), after “within the meaning of” insert “section 736 of”.

*Coal Industry Act 1977 (c. 39)*

- 18 In section 14(1) of the Coal Industry Act 1977 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “section 736”.

*Shipbuilding (Redundancy Payments) Act 1978 (c. 11)*

- 19 In section 1(4) of the Shipbuilding (Redundancy Payments) Act 1978 (schemes for payments to redundant workers), for the definitions of “subsidiary” and “wholly-owned subsidiary” substitute—

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““subsidiary” and “wholly-owned subsidiary” have the meanings given by section 736 of the Companies Act 1985;”.

*Capital Gains Tax Act 1979 (c. 14)*

F19 20 .....

**Textual Amendments**

**F19** Sch. 18 para. 20 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch.12** (with s. 201(3), [Sch. 11 paras. 20, 22, 26\(2\), 27](#))

*Crown Agents Act 1979 (c. 43)*

21 In section 31(1) of the Crown Agents Act 1979 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “ section 736(2) ”.

*Competition Act 1980 (c. 21)*

22 In sections 11(3)(f) and 12 of the Competition Act 1980 (references relating to public bodies, &c.), after “within the meaning of” insert “ section 736 of ”.

*British Aerospace Act 1980 (c. 26)*

23 In section 14(1) of the British Aerospace Act 1980 (interpretation)—  
 (a) in the definition of “subsidiary” for “the same meaning as in the Companies Act 1948”, and  
 (b) in the definition of “wholly-owned subsidiary” for “the same meaning as it has for the purposes of section 150 of the Companies Act 1948”,  
 substitute “ the meaning given by section 736 of the Companies Act 1985 ”.

*Local Government, Planning and Land Act 1980 (c. 65)*

24 In sections 100(1), 141(7) and 170(1)(d) and (2) of the Local Government, Planning and Land Act 1980 (which refer to wholly-owned subsidiaries) for “within the meaning of section 736(5)(b)” substitute “ as defined by section 736 ”.

*British Telecommunications Act 1981 (c. 38)*

25 In section 85 of the British Telecommunications Act 1981 (interpretation), for subsection (2) substitute—  
 “(2) Any reference in this Act to a subsidiary or wholly-owned subsidiary shall be construed in accordance with section 736 of the Companies Act 1985.”.



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*Transport Act 1981 (c. 56)*

- 26 In section 4(2) of the Transport Act 1981 (interpretation of provisions relating to activities of British Railways Board), for “section 154 of the Companies Act 1948” substitute “section 736 of the Companies Act 1985”.

*Value Added Tax Act 1983 (c. 55)*

- 27 In section 29 of the Value Added Tax Act 1983 (groups of companies), in subsection (8) after “within the meaning of” insert “section 736 of”.

*Telecommunications Act 1984 (c. 12)*

- 28 In section 73(1) of the Telecommunications Act 1984 (interpretation of Part V), for “the same meaning as in” substitute “the meaning given by section 736 of”.

*London Regional Transport Act 1984 (c. 32)*

- 29 In section 68 of the London Regional Transport Act 1984 (interpretation), for the definition of “subsidiary” substitute—

““subsidiary” (subject to section 62 of this Act) has the meaning given by section 736 of the Companies Act 1985;”.

*Inheritance Tax Act 1984 (c. 51)*

- 30 (1) The Inheritance Tax Act 1984 is amended as follows.
- (2) In section 13 (dispositions by close companies for benefit of employees), in the definition of “subsidiary” in subsection (5) for “the same meaning as in” substitute “ the meaning given by section 736 of”.
- (3) In section 103 (introductory provisions relating to relief for business property), in subsection (2) for “the same meanings as in” substitute “ the meanings given by section 736 of”.
- (4) In section 234 (interest on instalments) in subsection (3) for “within the meaning of” substitute “ as defined in section 736 of”.

*Ordnance Factories and Military Services Act 1984 (c. 59)*

- 31 In section 14 of the Ordnance Factories and Military Services Act 1984 (interpretation), for the definitions of “subsidiary” and “wholly-owned subsidiary” substitute—

““subsidiary” and “wholly-owned subsidiary” have the meanings given by section 736 of the Companies Act 1985.”.

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*Companies Act 1985 (c. 6)*

- 32 (1) The following provisions have effect with respect to the operation of section 23 of the Companies Act 1985 (prohibition on subsidiary being a member of its holding company).
- (2) In relation to times, circumstances and purposes before the commencement of section 144(1) of this Act, the references in section 23 to a subsidiary or holding company shall be construed in accordance with section 736 of the Companies Act 1985 as originally enacted.
- (3) Where a body corporate becomes or ceases to be a subsidiary of a holding company by reason of section 144(1) coming into force, the prohibition in section 23 of the Companies Act 1985 shall apply (in the absence of exempting circumstances), or cease to apply, accordingly.
- 33 (1) Section 153 of the Companies Act 1985 (transactions excepted from prohibition on company giving financial assistance for acquisition of its own shares) is amended as follows.
- (2) In subsection (4)(bb) (employees’ share schemes) for “a company connected with it” substitute “a company in the same group”.
- (3) For subsection (5) substitute—
- “(5) For the purposes of subsection (4)(bb) a company is in the same group as another company if it is a holding company or subsidiary of that company, or a subsidiary of a holding company of that company.”.
- 34 Section 293 of the Companies Act 1985 (age limit for directors) does not apply in relation to a director of a company if—
- (a) he had attained the age of 70 before the commencement of section 144(1) of this Act, and
- (b) the company became a subsidiary of a public company by reason only of the commencement of that subsection.
- 35 Nothing in section 144(1) affects the operation of Part XIII A of the Companies Act 1985 (takeover offers) in relation to a takeover offer made before the commencement of that subsection.
- 36 For the purposes of section 719 of the Companies Act 1985 (power to provide for employees on transfer or cessation of business), a company which immediately before the commencement of section 144(1) was a subsidiary of another company shall not be treated as ceasing to be such a subsidiary by reason of that subsection coming into force.
- 37 For the purposes of section 743 of the Companies Act 1985 (meaning of “employees’ share scheme”), a company which immediately before the commencement of section 144(1) was a subsidiary of another company shall not be treated as ceasing to be such a subsidiary by reason of that subsection coming into force.

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- 38 In Schedule 25 to the Companies Act 1985 “subsidiary” has the meaning given by section 736 of that Act as originally enacted.

*Transport Act 1985 (c. 67)*

- 39 In section 137(1) of the Transport Act 1985 (interpretation), in the definition of “subsidiary” for the words from “as defined” to the end substitute “ within the meaning of section 736 of the Companies Act 1985 as originally enacted (and not as substituted by section 144(1) of the Companies Act 1989); ”.

*Housing Act 1985 (c. 68)*

- 40 In section 622 of the Housing Act 1985 (minor definitions: general), in the definition of “subsidiary” for “the same meaning as in” substitute “ the meaning given by section 736 of ”.

*Housing Associations Act 1985 (c. 69)*

- 41 In section 101 of the Housing Associations Act 1985 (minor definitions: Part II), in the definition of “subsidiary” for “the same meaning as in” substitute “ the meaning given by section 736 of ”.

*Atomic Energy Authority Act 1986 (c. 3)*

- 42 In section 9 of the Atomic Energy Authority Act 1986 (interpretation), in the definition of “subsidiary” and “wholly-owned subsidiary” for “have the same meaning as in” substitute “ have the meaning given by section 736 of ”.

*Airports Act 1986 (c. 31)*

- 43 In section 82 of the Airports Act 1986 (general interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

*Gas Act 1986 (c. 44)*

- 44 In the Gas Act 1986—
- (a) in section 48(1) (interpretation of Part I), in the definitions of “holding company” and “subsidiary”, and
  - (b) in section 61(1) (interpretation of Part II), in the definition of “subsidiary”, for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

*Building Societies Act 1986 (c. 53)*

- 45 In section 119 of the Building Societies Act 1986 (interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

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*Income and Corporation Taxes Act 1988 (c. 1)*

- 46 In section 141 of the Income and Corporation Taxes Act 1988 (benefits in kind: non-cash vouchers), in the definition of “subsidiary” in subsection (7) for “section 736(5)(b)” substitute “section 736”.

*British Steel Act 1988 (c. 35)*

- 47 In section 15(1) of the British Steel Act 1988 (interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

SCHEDULE 19

Section 145.

MINOR AMENDMENTS OF THE COMPANIES ACT 1985

*Correction of cross-reference*

- 1 In section 131(1) of the <sup>M17</sup>Companies Act 1985 (merger relief) for “section 132(4)” substitute “section 132(8)”.

This amendment shall be deemed always to have had effect.

**Marginal Citations**

M17 1985 c. 6.

*Particulars to be given of directors and secretaries*

- 2 (1) Section 289 of the Companies Act 1985 (particulars of directors required to be entered in register) is amended as follows.
- (2) In subsection (1)(a) (particulars of individual directors)—
- (a) in sub-paragraph (i) for “Christian name and surname” and in sub-paragraph (ii) for “Christian name or surname” substitute “name”, and
- (b) for sub-paragraph (vii) substitute—  
“(vii) the date of his birth;”.
- (3) In subsection (1)(b) (particulars of other directors) after “corporation” insert “or Scottish firm” and after “corporate” insert “or firm”.
- (4) For subsection (2) substitute—  
“(2) In subsection (1)(a)—
- (a) “name” means a person’s Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and
- (b) the reference to a former name does not include—

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- (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
    - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
    - (iii) in the case of a married woman, the name by which she was known previous to the marriage.”.
- 3 (1) Section 290 of the Companies Act 1985 (particulars of secretaries to be entered in register) is amended as follows.
  - (2) In subsection (1)(a) (particulars of individuals) for “Christian name and surname” and “Christian name or surname” substitute “name”.
  - (3) For subsection (3) substitute—

“(3) Section 289(2)(a) and (b) apply for the purposes of the obligation under subsection (1)(a) of this section to state the name or former name of an individual.”.
- 4 (1) Section 305 of the Companies Act 1985 (directors’ names on company correspondence, &c.) is amended as follows.
  - (2) In subsection (1) for the words from “the Christian name” onwards substitute “the name of every director of the company”.
  - (3) For subsection (4) substitute—

“(4) For the purposes of the obligation under subsection (1) to state the name of every director of the company, a person’s “name” means—

    - (a) in the case of an individual, his Christian name (or other forename) and surname; and
    - (b) in the case of a corporation or Scottish firm, its corporate or firm name.
  - (5) The initial or a recognised abbreviation of a person’s Christian name or other forename may be stated instead of the full Christian name or other forename.
  - (6) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
  - (7) In this section “director” includes a shadow director and the reference in subsection (3) to an “officer” shall be construed accordingly.”.
- 5 (1) Section 686 of the <sup>M18</sup>Companies Act 1985 (documents to be delivered to registrar on registration of company not formed under companies legislation) is amended as follows.
  - (2) In subsection (1) (particulars to be delivered to registrar), for paragraph (b) (particulars of directors and managers) substitute—

“(b) a list showing with respect to each director or manager of the company—

    - (i) in the case of an individual, his name, address, occupation and date of birth,

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(ii) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.”.

(3) After that subsection insert—

“(1A) For the purposes of subsection (1)(b)(i) a person’s “name” means his Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.”.

#### Marginal Citations

M18 1985 c. 6.

6 In section 691 of the Companies Act 1985 (documents to be delivered to registrar on registration of oversea company), for subsection (2) (particulars of directors and secretary) substitute—

“(2) The list referred to in subsection (1)(b)(i) shall contain the following particulars with respect to each director—

(a) in the case of an individual—

- (i) his name,
- (ii) any former name,
- (iii) his usual residential address,
- (iv) his nationality,
- (v) his business occupation (if any),
- (vi) if he has no business occupation but holds other directorships, particulars of them, and
- (vii) his date of birth;

(b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

(3) The list referred to in subsection (1)(b)(i) shall contain the following particulars with respect to the secretary (or, where there are joint secretaries, with respect to each of them)—

- (a) in the case of an individual, his name, any former name and his usual residential address;
- (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

Where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars required by paragraph (a).

(4) In subsections (2)(a) and (3)(a) above—

- (a) “name” means a person’s Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and
- (b) the reference to a former name does not include—

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- (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
  - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
  - (iii) in the case of a married woman, the name by which she was known previous to the marriage.”.
- 7 (1) Schedule 1 to the Companies Act 1985 (particulars of directors and secretaries to be sent to registrar) is amended as follows.
- (2) In paragraph 1(a) (particulars of individual directors)—
  - (a) for “Christian name and surname” and “Christian name or surname” substitute “name”; and
  - (b) for the words from “and, in the case” to the end substitute “and his date of birth”.
- (3) In paragraph 1(b) (particulars of other directors) after “corporation” insert “or Scottish firm” and after “corporate” insert “or firm”.
- (4) In paragraph 3(1)(a) (particulars of individual secretaries) for “Christian name and surname” (twice) substitute “name”.
- (5) For paragraph 4 substitute—
  - “4 In paragraphs 1(a) and 3(1)(a) above—
    - (a) “name” means a person’s Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them; and
    - (b) the reference to a former name does not include—
      - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
      - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
      - (iii) in the case of a married woman, the name by which she was known previous to the marriage.”.

*Transactions with directors not requiring authorisation*

- 8 In section 321 of the <sup>M19</sup>Companies Act 1985 (exceptions from provisions requiring authorisation for substantial property transactions with directors, &c.), after subsection (3) insert—
  - “(4) Section 320(1) does not apply to a transaction on a recognised investment exchange which is effected by a director, or a person connected with him, through the agency of a person who in relation to the transaction acts as an independent broker.

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For this purpose an “independent broker” means—

- (a) in relation to a transaction on behalf of a director, a person who independently of the director selects the person with whom the transaction is to be effected, and
  - (b) in relation to a transaction on behalf of a person connected with a director, a person who independently of that person or the director selects the person with whom the transaction is to be effected;
- and “recognised”, in relation to an investment exchange, means recognised under the Financial Services Act 1986.”.

**Marginal Citations**

**M19** 1985 c. 6.

*Time limit for holding extraordinary general meeting convened on members’ requisition*

9 In section 368 of the Companies Act 1985 (extraordinary general meeting on members’ requisition), after subsection (7) add—

“(8) The directors are deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening the meeting.”.

*Removal of restriction on transfer of shares*

10 (1) In section 456(3) of the Companies Act 1985 (removal of restrictions by order of court), in paragraph (b) (order where shares to be sold)—

- (a) for “sold” substitute “ transferred for valuable consideration ”, and
- (b) for “sale” substitute “ transfer ”.

(2) In section 454(2) and (3) (which refer to section 456(3)(b)) for “sell” and “sale” substitute “ transfer ”.

VALID FROM 01/10/2009

*Protection of company’s members against unfair prejudice*

PROSPECTIVE



*Status: Point in time view as at 10/03/1994.*

*Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F20** Sch. 19 paras. 11-16 repealed (1.10.2009) by [Companies Act 2006 \(c. 46\)](#), s. 1300(2), [Sch. 16](#); [S.I. 2008/2860](#), art. 4, [Sch. 1 Pt. 1](#) (with arts. 7, 8, [Sch. 2](#)) (which transitional provisions in Sch. 2 are amended (1.10.2009) by [S.I. 2009/2476](#), arts. 1(3), 2(3)(4) and by [S.I. 2009/1802](#), arts. 1, 18, Sch.)

### *Requirements for registration by joint stock companies*

- 12 In section 684(1) of the Companies Act 1985 (requirements for registration by joint stock companies: documents to be delivered to registrar), in paragraph (b) (list of members on specified day) for “(not more than 6 clear days before the day of registration)” substitute “(not more than 28 clear days before the day of registration)”.

VALID FROM 01/10/2009

### *Delivery of documents by oversea companies*

PROSPECTIVE

**F20** 13 .....

### Textual Amendments

**F20** Sch. 19 paras. 11-16 repealed (1.10.2009) by [Companies Act 2006 \(c. 46\)](#), s. 1300(2), [Sch. 16](#); [S.I. 2008/2860](#), art. 4, [Sch. 1 Pt. 1](#) (with arts. 7, 8, [Sch. 2](#)) (which transitional provisions in Sch. 2 are amended (1.10.2009) by [S.I. 2009/2476](#), arts. 1(3), 2(3)(4) and by [S.I. 2009/1802](#), arts. 1, 18, Sch.)

### *Companies' registered numbers*

- 14 For section 705 of the Companies Act 1985 (Companies' registered numbers) substitute—

#### **“705 Companies' registered numbers.**

- (1) The registrar shall allocate to every company a number, which shall be known as the company's registered number.
- (2) Companies' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may from time to time determine.
- (3) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to him necessary.
- (4) A change of a company's registered number has effect from the date on which the company is notified by the registrar of the change; but for a period of three years beginning with the date on which that notification is sent by the

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registrar the requirement of section 351(1)(a) as to the use of the company’s registered number on business letters and order forms is satisfied by the use of either the old number or the new.

(5) In this section “company” includes—

- (a) any overseas company which has complied with section 691 (delivery of statutes to registrar, &c.), other than a company which appears to the registrar not to have a place of business in Great Britain; and
- (b) any body to which any provision of this Act applies by virtue of section 718 (unregistered companies).”.

*Exemptions from limit of 20 on members of partnership*

- 15 (1) Section 716 of the Companies Act <sup>M20</sup>1985 (prohibition of formation of company, association or partnership with more than 20 members unless registered as company, &c.) is amended as follows.
- (2) In subsection (2) (exemptions), after paragraph (c) insert—
- “(d) for any purpose prescribed by regulations (which may include a purpose mentioned above), of a partnership of a description so prescribed.”; and omit the words inserted by paragraph 22 of Schedule 16 to the Financial Services Act <sup>M21</sup>1986.
- (3) For subsections (3) and (4) substitute—
- “(3) In subsection (2)(a) “solicitor”—
- (a) in relation to England and Wales, means solicitor of the Supreme Court, and
  - (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.
- (4) In subsection (2)(c) “recognised stock exchange” means—
- (a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and
  - (b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by statutory instrument.”.

**Marginal Citations**

**M20** 1985 c. 6.

**M21** 1986 c. 60.

- 16 (1) Section 717 of the Companies Act 1985 (limited partnerships: limit on number of members) is amended as follows.
- (2) In subsection (1) (exemptions from limit of 20 members under section 4(2) of Limited Partnerships Act 1907), after paragraph (c) insert—
- “(d) to a partnership carrying on business of any description prescribed by regulations (which may include a business of any description

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mentioned above), of a partnership of a description so prescribed.”; and omit the words inserted by paragraph 22 of Schedule 16 to the Financial Services Act 1986.

(3) For subsections (2) and (3) substitute—

“(2) In subsection (1)(a) “solicitor”—

- (a) in relation to England and Wales, means solicitor of the Supreme Court, and
- (b) in relation to Scotland, means a person enrolled or deemed enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1980.

(3) In subsection (1)(c) “recognised stock exchange” means—

- (a) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, and
- (b) any other stock exchange for the time being recognised for the purposes of this section by the Secretary of State by order made by Statutory Instrument.”.

*Meaning of “officer who is in default”*

17 In section 730 of the Companies Act 1985 (punishment of offences), in subsection (5)(meaning of “officer who is in default”), after “company” (twice) insert “or other body”.

*Offences committed by partnerships and other unincorporated bodies*

18 In section 734 of the Companies Act 1985 (criminal proceedings against unincorporated bodies), at the end add—

“(5) Where such an offence committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) Where such an offence committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.”.

*Meaning of “office copy” in Scotland*

19 In Part XXVI of the Companies Act 1985 (interpretation), after section 743 insert—

**“743A Meaning of “office copy” in Scotland.**

References in this Act to an office copy of a court order shall be construed, as respects Scotland, as references to a certified copy interlocutor.”.

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VALID FROM 03/07/1995

*Index of defined expressions*

20 In Part XXVI of the Companies Act 1985 (interpretation), after section 744 insert—

**“744A Index of defined expressions.**

The following Table shows provisions defining or otherwise explaining expressions for the purposes of this Act generally—

**Commencement Information**

**II** Sch. 19 para. 20 wholly in force at 3.7.1995 by S.I. 1995/1352, art. 3(b)

*Fraudulent trading by unregistered companies*

21 In Schedule 22 to the Companies Act <sup>M22</sup>1985 (provisions applying to unregistered companies), at the appropriate place insert—

“Part XVI	Fraudulent trading by a company.”.
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**Marginal Citations**

**M22** 1985 c. 6.

SCHEDULE 20

section 153.

AMENDMENTS ABOUT MERGERS AND RELATED MATTERS

*Fair Trading Act 1973 (c. 41)*

1 In section 46 of the Fair Trading Act 1973, subsection (3) is omitted.

2 (1) In section 60 of that Act—

- (a) in subsection (1) for “the period of three months beginning with the date of the” there is substituted “such period (not being longer than three months beginning with the date of the reference) as may be specified in the”,
- (b) in subsection (2) for “original period of three months” there is substituted “period specified in the newspaper merger reference”, and
- (c) in subsection (3) for “subsection (1)” there is substituted “the newspaper merger reference”.

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- (2) This paragraph does not apply in relation to any newspaper merger reference made before the passing of this Act.
- 3 In section 63(1) of that Act, for “to 75 of this Act shall have effect in relation to merger references other than” there is substituted “to 75K of this Act shall not have effect in relation to”.
- 4 In section 66 of that Act—
- (a) in subsections (1) and (3), after “the Secretary of State” there is inserted “or the commission”, and
  - (b) in subsection (4), after “this section” there is inserted “and to section 66A of this Act”.
- 5 (1) In section 67 of that Act, in subsection (2)(a), for the words from “any enterprise” to the end there is substituted—
- “(i) any enterprise which remains under the same ownership and control, or
  - (ii) if none of the enterprises remains under the same ownership and control, the enterprise having the assets with the highest value, and”.
- (2) In subsection (4) of that section—
- (a) after “section 66” there is inserted “or subsection (1) of section 66A”, and
  - (b) for “that subsection” there is substituted “either of those subsections”.
- 6 In section 68(4) of that Act, after “the Secretary of State” there is inserted “or, as the case may be, the Commission”.
- 7 In section 71 of that Act—
- (a) in subsection (1) the words “made under section 69(4) of this Act”, and
  - (b) subsection (2),
- are omitted.
- 8 In section 74(1) of that Act—
- (a) the words “and does not impose on the Commission a limitation under section 69(4) of this Act” are omitted, and
  - (b) in paragraph (d), for “paragraph 12” there is substituted “paragraphs 12 and 12A”.
- 9 In section 75(4) of that Act—
- (a) after “sections 66” there is inserted “66A”, and
  - (b) for paragraphs (a) and (b) there is substituted—

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- “(a) section 66 shall apply, where an event by which any enterprises cease as between themselves to be distinct enterprises will occur if the arrangements are carried into effect, as if the event had occurred immediately before the date of the reference;
- (aa) section 66A shall apply, where a transaction falling within subsection (2) of that section will occur if the arrangements are carried into effect, as if the transaction had occurred immediately before the date of the reference;
- (b) in section 67(4) the references to subsection (1) of section 66 and subsection (1) of section 66A shall be construed as references to those subsections as modified in accordance with paragraph (a) or (aa) of this subsection;”.
- 10 Paragraphs 4 to 9 (and the repeals in Schedule 24 corresponding to paragraphs 7 and 8(a)) do not apply in relation to any merger reference made before the passing of this Act.
- 11 At the end of section 76 of that Act there is added—
- “(2) In exercising his duty under this section the Director shall take into consideration any representations made to him by persons appearing to him to have a substantial interest in any such arrangements or transactions or by bodies appearing to him to represent substantial numbers of persons who have such an interest.”.
- 12 (1) In section 83 of that Act, after subsection (3) there is inserted—
- “(3A) Without prejudice to subsection (3) above, if the Minister or Ministers to whom any such report is made consider that it would not be in the public interest to disclose—
- (a) any matter contained in the report relating to the private affairs of an individual whose interests would, in the opinion of the Minister or Ministers, be seriously and prejudicially affected by the publication of that matter, or
- (b) any matter contained in the report relating specifically to the affairs of a particular person whose interests would, in the opinion of the Minister or Ministers, be seriously and prejudicially affected by the publication of that matter,
- the Minister or Ministers shall exclude that matter from the copies of the report as laid before Parliament and from the report as published under this section.”.
- (2) This paragraph does not apply in relation to any report made before the passing of this Act.
- 13 (1) In section 85 of that Act, for subsection (7) there is substituted—

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- “(7) If any person (referred to in subsection (7A) of this section as “the defaulter”) refuses or otherwise fails to comply with any notice under subsection (1) of this section, any one of those who, in relation to the investigation in question, are performing the functions of the Commission may certify that fact in writing to the court and the court may enquire into the case.
- (7A) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the defaulter did without reasonable excuse refuse or otherwise fail to comply with the notice, the court may punish the defaulter (and, in the case of a body corporate, any director or officer) in like manner as if the defaulter had been guilty of contempt of court.”.
- (2) Subsections (5) and (6)(b) of that section are omitted.
- 14 (1) In section 88 of that Act, in subsection (1) for the words from “if requested” to “the relevant parties” there is substituted “to comply with any request of the appropriate Minister or Ministers to consult with any persons mentioned in the request (referred to below in this section as “the relevant parties”)”.
- (2) After subsection (2) of that section there is inserted—
- “(2A) Where—
- (a) an undertaking is given under this section after the commencement of this subsection, or
- (b) an undertaking given under this section is varied or released after that time,
- the Minister to whom the undertaking is or was given shall cause the undertaking or, as the case may be, the variation or release to be published in such manner as the Minister may consider appropriate.”.
- (3) In subsection (4) of that section—
- (a) in paragraph (a) for “it” there is substituted “the undertaking is no longer appropriate and either the relevant parties (or any of them) can be released from the undertaking or the undertaking”, and
- (b) in paragraph (b) for “that it” there is substituted “that any person can be so released or that an undertaking”,
- and in subsection (5), after “varied” (in both places) there is inserted “or revoked”.
- (4) In subsection (6) of that section the words from “the relevant parties” to the “and” immediately following paragraph (c) are omitted.
- (5) Sub-paragraphs (1) and (4) (and the repeal in Schedule 24 corresponding to sub-paragraph (4)) do not apply in relation to any report made before the passing of this Act.
- 15 (1) In section 89 of that Act, in subsection (1), for paragraphs (a) and (b) there is substituted—
- “(a) in the circumstances specified in subsection (1) of any of the following sections—
- (i) sections 56, 73 and 75K of this Act, and

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- (ii) section 10 of the Competition Act 1980,  
the Secretary of State makes, has made, or has under consideration the making of, an order under the section in question exercising any of the powers specified in Schedule 8 to this Act, or
  - (b) in the circumstances specified in subsection (1) of section 12 of the Competition Act 1980 the Secretary of State makes, has made, or has under consideration the making of, an order under subsection (5) of that section exercising any of those powers.”.
- (2) In subsection (2) of that section, “Part II of” is omitted.
- (3) In subsection (3) of that section, after paragraph (b) there is inserted—  
“(bb) require any person to furnish any such information to the Director as may be specified or described in the order;”.
- (4) The amendments made by sub-paragraphs (1) to (3) have effect in relation to the making of any order under section 89 of the Fair Trading Act <sup>M23</sup>1973 after the passing of this Act, whether the principal order (within the meaning of that section) was made before or after that time.

#### Marginal Citations

**M23** 1973 c. 41.

- 16 (1) Section 90 of that Act is amended as follows.
- (2) In subsection (1) after “section 74” there is inserted “, section 75K”.
- (3) For subsection (5) there is substituted—  
“(5) Nothing in any order to which this section applies shall have effect so as to—  
(a) cancel or modify conditions in licences granted—  
(i) under a patent granted under the Patents Act 1949 or the Patents Act 1977 or a European Patent (UK) (within the meaning of the Patents Act 1977), or  
(ii) in respect of a design registered under the Registered Designs Act 1949,  
by the proprietor of the patent or design, or  
(b) require an entry to be made in the register of patents or the register of designs to the effect that licences under such a patent or such a design are to be available as of right.”.
- 17 In section 132(1) of that Act, after “85(6)” there is inserted “ section 93B ”.
- 18 (1) In Schedule 3 to that Act, in paragraph 16(2) for “75” there is substituted “ “73 ”.
- (2) This paragraph does not apply in relation to any report made before the passing of this Act.
- 19 (1) Schedule 8 to that Act is amended as follows.
- (2) After paragraph 9 there is inserted—



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“9A (1) An order may require a person supplying goods or services to publish—

- (a) any such accounting information in relation to the supply of the goods and services, and
- (b) any such information in relation to—
  - (i) the quantities of goods or services supplied, or
  - (ii) the geographical areas in which they are supplied,as may be specified or described in the order.

(2) In this paragraph “accounting information”, in relation to a supply of goods or services, means information as to—

- (a) the costs of the supply, including fixed costs and overheads,
- (b) the manner in which fixed costs and overheads are calculated and apportioned for accounting purposes of the supplier, and
- (c) the income attributable to the supply.”.

(3) After paragraph 12 there is inserted—

“12A An order may require any person to furnish any such information to the Director as may be specified or described in the order.

12B An order may require any activities to be carried on separately from any other activities.

12C An order may prohibit or restrict the exercise of any right to vote exercisable by virtue of the holding of any shares, stock or securities.”.

20 (1) In Schedule 9 to that Act, in paragraph 4 the words from “either” to the end are omitted.

(2) This paragraph has effect in relation to the laying of any draft order under paragraph 4 of Schedule 9 to the Fair Trading Act <sup>M24</sup>1973 after the passing of this Act, whether the notice under that Schedule was published before or after that time.

**Marginal Citations**

M24 1973 c. 41.

*Competition Act 1980 (c. 21)*

21 In section 3(8) of the Competition Act 1980—

- (a) for “(5)” there is substituted “6”, and
- (b) at the end there is inserted “but as if, in subsection (7) of that section, for the words from “any one” to “the Commission” there were substituted “the Director””

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- 22 In section 4(4) of that Act for paragraph (a) there is substituted—  
 “(a) to arrange for—  
     (i) any undertaking accepted by him under this section, and  
     (ii) any variation or release of such an undertaking after the  
         passing of the Companies Act 1989,  
 to be published in such manner as appears to him to be appropriate.”.

- 23 In section 9(4) of that Act—  
 (a) In paragraph (a), after “undertaking” there is inserted “and of any variation of it after the passing of the Companies Act 1989”, and  
 (b) in paragraph (b), after “undertaking” there is inserted “and any variation or release of it after that time”.

- 24 In section 29(1)(a) of that Act after “section” there is inserted “75G or”.

*Telecommunications Act 1984 (c. 12)*

- 25 (1) In section 13(9) of the Telecommunications Act 1984, after “Commission)” there is inserted “together with section 24 of the Competition Act 1980 (modification of provisions about performance of Commission’s functions) ”.  
 (2) The Monopolies and Mergers Commission (Performance of Functions) Order 1989 shall have effect as if sub-paragraph (1) above had come into force immediately before the making of the Order.

*Financial Services Act 1986 (c. 60)*

- 26 In section 123(3) of the Financial Services Act 1986—  
 (a) for “(5)” there is substituted “(6)”, and  
 (b) at the end there is inserted “but as if, in subsection (7) of that section, for the words from “any one” to “the Commission” there were substituted “the Director””.

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## SCHEDULE 21

section 156(1).

### ADDITIONAL REQUIREMENTS FOR RECOGNITION

#### PART I

##### U.K. INVESTMENT EXCHANGES

###### *Default Rules*

- 1 (1) The exchange must have default rules which, in the event of a member of the exchange appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which he is a party.
- (2) The rules may authorise the taking of the same or similar action in relation to a member who appears to be likely to become unable to meet his obligations in respect of one or more market contracts.
- (3) The rules must enable action to be taken in respect of all unsettled market contracts, other than those entered into by a recognised clearing house for the purposes of or in connection with the provision of clearing services for the exchange.
- (4) As regards contracts entered into by the exchange for the purposes of or in connection with the provision of its own clearing services, the rules must contain provision corresponding to that required by paragraphs 9 to 11 below in the case of a UK clearing house.
- (5) As regards other contracts the rules must contain provision complying with paragraphs 2 and 3 below.

###### **Commencement Information**

- I2** [Sch. 21](#) wholly in force at 25.4.1991; [Sch. 21](#) in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see [s. 215\(2\)](#) and [S.I. 1991/488](#), [art. 2\(2\)](#), 1991/878, art. 2, Sch.

###### *Content of rules*

- 2 (1) The rules must provide for all rights and liabilities between those party as principal to unsettled market contracts to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the rules.
- (2) The rules must further provide—
  - (a) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum, and
  - (b) for the certification by or on behalf of the exchange of the net sum payable or, as the case may be, of the fact that no sum is payable.

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- (3) The rules may make special provision with respect to, or exclude from the provisions required by sub-paragraphs (1) and (2), contracts of any description prescribed for the purposes of this sub-paragraph by regulations made by the Secretary of State.
- <sup>F21</sup>(4) The reference in sub-paragraph (1) to rights and liabilities between those party as principal to unsettled market contracts does not include rights and liabilities—
- (a) in respect of margin; or
  - (b) arising out of a failure to perform a market contract.

#### Textual Amendments

**F21** Schedule 21, para. 2(4) added by [S.I. 1991/880, reg. 17](#)

#### Commencement Information

**I3** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

#### *Notification to other parties affected*

- 3 The exchange must have adequate arrangements for securing that—
- (a) parties to unsettled market contracts with a defaulter acting as principal are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party; and
  - (b) parties to unsettled market contracts with a defaulter acting as agent and the defaulter's principals are notified as soon as reasonably practicable of the default and of the identity of the other party to the contract.

#### Commencement Information

**I4** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

#### *Application of default rules to designated non-members*

- 4 (1) The rules may make the same or similar provision in relation to designated non-members as in relation to members of the exchange.
- (2) If such provision is made, the exchange must have adequate procedures—
- (a) for designating the persons, or descriptions of person, in respect of whom action may be taken,
  - (b) for keeping under review the question which persons or descriptions of person should be or remain so designated, and
  - (c) for withdrawing such designation.

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- (3) The procedures shall be designed to secure that a person is not or does not remain designated if failure by him to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market, and that a description of persons is not or does not remain designated if failure by a person of that description to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market.
- (4) The exchange must have adequate arrangements—
- (a) for bringing a designation or withdrawal of designation to the attention of the person or description of persons concerned, and
  - (b) where a description of persons is designated, or the designation of a description of persons is withdrawn, for ascertaining which persons fall within that description.

**Commencement Information**

**I5** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

*Delegation of functions in connection with default procedures*

- 5 The rules may make provision for the whole or part of the functions mentioned in paragraphs 1 to 4 to be performed by another body or person on behalf of the exchange.

**Commencement Information**

**I6** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

*Co-operation with other authorities*

- 6 The exchange must be able and willing to co-operate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a member of the exchange or any designated non-member.

**Commencement Information**

**I7** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

*Status: Point in time view as at 10/03/1994.*

**Changes to legislation:** Companies Act 1989 is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### *Margin*

- 7 Where the exchange provides its own clearing arrangements and margined transactions are effected, paragraph 14 below applies as it applies in relation to a clearing house.

#### **Commencement Information**

- I8** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, art. 2(2), 1991/878, art. 2, Sch.

## **PART II**

### U.K. CLEARING HOUSES

#### *Default rules*

- 8 (1) The clearing house must have default rules which, in the event of a member of the clearing house appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken to close out his position in relation to all unsettled market contracts to which he is a party.
- (2) The rules may authorise the taking of the same or similar action where a member appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

#### **Commencement Information**

- I9** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, art. 2(2), 1991/878, art. 2, Sch.

#### *Content of rules*

- 9 (1) The rules must provide for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules.
- (2) The rules must further provide—
- (a) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;
  - (b) for that sum—
    - (i) if payable by the defaulter to the clearing house, to be set off against any property provided by or on behalf of the defaulter as cover for

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- margin (or the proceeds of realisation of such property) so as to produce a further net sum, and
- (ii) if payable by the clearing house to the defaulter to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and
- (c) for the certification by or on behalf of the clearing house of the sum finally payable or, as the case may be, of the fact that no sum is payable.

#### Commencement Information

- I10** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

- 10 (1) The reference in paragraph 9 to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the rules authorising—
- (a) the effecting by the clearing house of corresponding contracts in relation to unsettled market contracts to which the defaulter is a party;
- (b) the transfer of the defaulter’s position under an unsettled market contract to another member of the clearing house;
- (c) the exercise by the clearing house of any option granted by an unsettled market contract.
- (2) A “corresponding contract” means a contract on the same terms (except as to price or premium) as the market contract, but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.

This sub-paragraph applies with any necessary modifications in relation to a market contract which is not an agreement to sell.

- (3) The reference in paragraph 9 to the rights and liabilities of a defaulter under or in respect of an unsettled market contract does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

#### Commencement Information

- I11** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

#### *Notification to other parties affected*

- 11 The clearing house must have adequate arrangements for securing that parties to unsettled market contracts with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party.

*Status: Point in time view as at 10/03/1994.*

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#### Commencement Information

- I12** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

#### *Delegation of functions in connection with default procedures*

- 12 The rules may make provision for the whole or part of the functions mentioned in paragraphs 8 to 11 to be performed by another body or person on behalf of the clearing house.

#### Commencement Information

- I13** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

#### *Co-operation with other authorities*

- 13 The clearing house must be able and willing to co-operate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a member of the clearing house.

#### Commencement Information

- I14** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

#### *Margin*

- 14 (1) The rules of the clearing house must provide that, in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account.
- (2) This is without prejudice to the requirements of any relevant regulations under section 55 of the <sup>M25</sup>Financial Services Act 1986 (clients' money).

#### Commencement Information

- I15** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.



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### Marginal Citations

**M25** 1986 c. 60.

## PART III

### OVERSEAS INVESTMENT EXCHANGES AND CLEARING HOUSES

- 15 (1) The rules and practices of the body, together with the law of the country in which the body's head office is situated, must be such as to provide adequate procedures for dealing with the default of persons party to market contracts connected with the body.
- (2) The reference in sub-paragraph (1) to default is to a person being unable to meet his obligations.

### Commencement Information

**I16** Sch. 21 wholly in force at 25.4.1991; Sch. 21 in force on 25.3.1991 insofar as is necessary to enable regulations to be made under para. 2(3) and wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), 1991/878, art. 2, Sch.

## SCHEDULE 22

Section 182(4).

### FINANCIAL MARKETS AND INSOLVENCY: PROVISIONS APPLYING TO PRE-COMMENCEMENT CASES

#### *Introductory*

- 1 The provisions of this Schedule have effect for the purpose of safeguarding the operation of certain financial markets—
- (a) in the event of the insolvency, winding up or default of a person party to transactions in the market (paragraphs 2 to 8), and
- (b) as regards the effectiveness or enforcement of certain charges given to secure obligations in connection with such transactions (paragraphs 9 to 12).

### Commencement Information

**I17** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

#### *Recognised investment exchanges and clearing houses*

- 2 (1) This Schedule applies to the following descriptions of contract connected with a recognised investment exchange or recognised clearing house.

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The contracts are referred to in this Schedule as “market contracts”.

- (2) In relation to a recognised investment exchange, this Schedule applies to—
- (a) contracts entered into by a member or designated non-member of the exchange which are—
    - (i) made on or otherwise subject to the rules of the exchange,
    - (ii) on terms expressed to be as traded on the exchange, or
    - (iii) on the same terms as those on which an equivalent contract would be made on the exchange; and
  - (b) contracts subject to the rules of the exchange entered into by the exchange for the purposes of or in connection with the provision of clearing services.

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

- (3) In relation to a recognised clearing house, this Schedule applies to contracts subject to the rules of the clearing house entered into by the clearing house for the purposes of or in connection with the provision of clearing services for a recognised investment exchange.

This includes contracts effected under or in consequence of action taken by the clearing house under its default rules.

**Commencement Information**

**I18** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 3 The general law of insolvency has effect in relation to market contracts, and action taken under the rules of a recognised investment exchange or recognised clearing house with respect to such contracts, subject to the following provisions of this Schedule.

**Commencement Information**

**I19** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 4 (1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up or sequestration, or in the administration of an insolvent estate—
- (a) a market contract,
  - (b) the rules of a recognised investment exchange or recognised clearing house as to the settlement of market contracts,
  - (c) the default rules of a recognised investment exchange or recognised clearing house.
- (2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the <sup>M26</sup>Insolvency Act 1986 or the <sup>M27</sup>Bankruptcy (Scotland) Act 1985, shall not be exercised in such a way as to prevent or interfere with—

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- (a) the settlement of a market contract in accordance with the rules of a recognised investment exchange or recognised clearing house,
  - (b) any action taken under the default rules of such an exchange or clearing house.
- (3) Nothing in the following provisions of this Schedule shall be construed as affecting the generality of sub-paragraph (2).
- (4) A debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or bankruptcy, or in Scotland claimed in a winding up or sequestration, until the completion of the default proceedings.

A debt or other liability which by virtue of this sub-paragraph may not be proved or claimed shall not be taken into account for the purposes of any set-off until the completion of the default proceedings.

#### Commencement Information

**I20** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

#### Marginal Citations

**M26** 1986 c. 45.

**M27** 1985 c. 66.

- 5 (1) A liquidator or trustee of a defaulter shall not—
- (a) declare or pay any dividend to the creditors, or
  - (b) return any capital to contributories,
- unless he has retained what he reasonably considers to be an adequate reserve in respect of any claims arising as a result of the default proceedings of the exchange or clearing house concerned.
- (2) Nothing in section 11(3), 130 or 285 of the Insolvency Act 1986 (which restrict the taking of certain legal proceedings and other steps), and nothing in the Bankruptcy (Scotland) Act 1985, shall affect any action taken by an exchange or clearing house for the purpose of its default proceedings.

#### Commencement Information

**I21** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 6 (1) The following provisions apply with respect to the net sum certified by a recognised investment exchange or recognised clearing house, upon the completion of proceedings under its default rules, to be payable by or to a defaulter.
- (2) If, in England and Wales, a bankruptcy or winding up order has been made, or a resolution for voluntary winding up has been passed, the debt—
- (a) is provable in the bankruptcy or winding up or, as the case may be, is payable to the relevant office-holder, and

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- (b) shall be taken into account, where appropriate, under section 323 of the Insolvency Act 1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of a winding up, in the same way as a debt due before the commencement of the bankruptcy or winding up.
- (3) If, in Scotland, an award of sequestration or a winding-up order has been made, or a resolution for voluntary winding up has been passed, the debt—
- (a) may be claimed in the sequestration or winding up or, as the case may be, is payable to the relevant office-holder, and
- (b) shall be taken into account for the purposes of any rule of law relating to compensation or set-off applicable in sequestration or winding up, in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the Bankruptcy (Scotland) Act 1985) or the commencement of the winding up.

#### Commencement Information

**I22** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 7 (1) Sections 178, 186, 315 and 345 of the Insolvency Act 1986 (power to disclaim onerous property and court's power to order rescission of contracts, &c.) do not apply in relation to—
- (a) a market contract, or
- (b) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to market contracts.
- In the application of this sub-paragraph in Scotland, the reference to sections 178 and 315 shall be construed as a reference to any rule of law having the like effect as those sections.
- (2) Sections 127 and 284 of the <sup>M28</sup>Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition) do not apply to—
- (a) a market contract, or any disposition of property in pursuance of such a contract,
- (b) the provision of margin in relation to market contracts,
- (c) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to a market contract, or any disposition of property in pursuance of such a contract, or
- (d) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.
- (3) However, if a person enters into a market contract knowing that a petition has been presented for the winding up or bankruptcy of the other party to the contract, the value of any profit or benefit to him arising from the contract is recoverable from him by the relevant office-holder unless the court directs otherwise.
- (4) Any sum recoverable by virtue of sub-paragraph (3) has the same priority, in the event of the insolvency of the person from whom it is due, as if it were secured by a fixed charge.

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#### Commencement Information

**I23** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

#### Marginal Citations

**M28** [1986 c. 45.](#)

- 8 (1) No order shall be made in relation to a market contract under—
- (a) section 238 or 339 of the Insolvency Act 1986 (transactions at an under-value),
  - (b) section 239 or 340 of that Act (preferences), or
  - (c) section 423 of that Act (transactions defrauding creditors),
- unless the court is satisfied that the person in favour of whom the contract was made knew at the time he entered into it that it was at an under-value (within the meaning of the relevant provision) or, as the case may be, that a preference was being given.
- (2) As respects Scotland, no decree shall be granted in relation to a market contract—
- (a) under section 34 or 36 of the <sup>M29</sup>Bankruptcy (Scotland) Act 1985 or section 242 or 243 of the Insolvency Act 1986 (gratuitous alienations and unfair preferences), or
  - (b) at common law,
- unless the court is satisfied that the person with whom the contract was made knew at the time he entered into it that it was challengeable under any of the provisions mentioned in paragraph (a) or at common law.
- (3) Sub-paragraphs (1) and (2) apply in relation to—
- (a) a disposition of property in pursuance of a market contract,
  - (b) the provision of margin in relation to market contracts,
  - (c) a contract effected by a recognised investment exchange or recognised clearing house for the purpose of realising property provided as margin, or
  - (d) a disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin,
- as they apply in relation to the making of a market contract.

#### Commencement Information

**I24** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

#### Marginal Citations

**M29** [1985 c.66.](#)

### *Market charges*

- 9 (1) The charges to which paragraphs 10 to 12 apply are charges, whether fixed or floating, granted—

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- (a) in favour of a recognised investment exchange, for the purpose of securing debts or liabilities arising in connection with the settlement of market contracts,
- (b) in favour of a recognised clearing house, for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts, or
- (c) in favour of a person who agrees to make payments as a result of the transfer of specified securities made through the medium of a computer-based system established by the Bank of England and The Stock Exchange, for the purpose of securing debts or liabilities of the transferee arising in connection with the payments.

Those charges are referred to in this Schedule as “market charges”.

- (2) Where a charge is granted partly for purposes specified in sub-paragraph (1)(a), (b) or (c) and partly for other purposes, paragraphs 10 to 12 apply to it so far as it has effect for the specified purposes; and the expression “market charge” shall be construed accordingly.
- (3) In this paragraph and paragraphs 10 to 12—
  - “charge” means any form of security, including a mortgage and, in Scotland, a heritable security; and
  - “specified securities” means securities for the time being specified in the list in Schedule 1 to the <sup>M30</sup>Stock Transfer Act 1982, and includes any right to such securities.

**Commencement Information**

**I25** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

**Marginal Citations**

**M30** 1982 c. 41.

- 10 The general law of insolvency has effect in relation to market charges and action taken in enforcing them subject to the following provisions of this Schedule.

**Commencement Information**

**I26** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 11 (1) Sections 10(1)(b) and 11(3)(c) of the <sup>M31</sup>Insolvency Act 1986 (no enforcement of security while petition for administration order pending or order in force) do not apply to a market charge.
- (2) Section 11(2) of that Act (receiver to vacate office when so required by administrator) does not apply to a receiver appointed under a market charge.
- (3) Section 15(1) and (2) of that Act (administrator’s power to deal with charged property) do not apply to a market charge.

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- (4) Sections 127 and 284 of that Act (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition) do not apply to—
- (a) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made, or
  - (b) any disposition of property made in enforcing a market charge.
- (5) However, if a person (other than the chargee under the market charge) who is a party to a disposition mentioned in sub-paragraph (4)(a) knows at the time of the disposition that a petition has been presented for the winding up or bankruptcy of the party making the disposition, the value of any profit or benefit to him arising from the disposition is recoverable from him by the relevant office-holder unless the court directs otherwise.
- (6) Any sum recoverable by virtue of sub-paragraph (5) has the same priority, in the event of the insolvency of the person from whom it is due, as if it were secured by a fixed charge.

#### Commencement Information

**I27** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

#### Marginal Citations

**M31** 1986 c. 45.

- 12 (1) No legal proceedings, execution or other legal process may be commenced or continued, and no distress may be levied against property which is, or becomes, subject to a market charge except with the consent of the person in whose favour the charge was granted or the leave of the court.
- (2) The court may give leave subject to such terms as it thinks fit.
- (3) Sub-paragraph (1) does not apply to proceedings to enforce any security over, or any equitable interest in, the property.
- (4) Sections 10(1)(c), 11(3)(d), 130(3) and 285(3) of the <sup>M32</sup>Insolvency Act 1986 (which restrict the taking of certain legal proceedings and other steps) have effect accordingly.
- (5) In the application of this paragraph to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied shall be omitted.

#### Commencement Information

**I28** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

#### Marginal Citations

**M32** 1986 c. 45.



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### *Supplementary provisions*

- 13 (1) In this Schedule “default rules” means—
- (a) in relation to a recognised investment exchange, rules which provide in the event of a member or designated non-member of the exchange appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts, for the settlement forthwith of all unsettled market contracts to which he is a party as principal, other than those whose performance is ensured by a recognised clearing house;
  - (b) in relation to a recognised clearing house, rules which provide in the event of a member of the clearing house appearing to be unable, or likely to become unable, to meet his obligations in respect of any market contract, for the closing out of his position in relation to all market contracts to which he is a party.
- (2) References in this Schedule to a “defaulter” are to a person in respect of whom action has been taken by a recognised investment exchange or recognised clearing house under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Schedule to “default” shall be construed accordingly.
- (3) In this Schedule “default proceedings” means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.

#### **Commencement Information**

**I29** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 14 (1) The following are relevant office-holders for the purposes of this Schedule—
- (a) the official receiver,
  - (b) any person acting in relation to a company as its liquidator, provisional liquidator, administrator or administrative receiver,
  - (c) any person acting in relation to an individual (or, in Scotland, a deceased debtor) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate,
  - (d) any person acting as administrator (or, in Scotland, as judicial factor) of an insolvent estate of a deceased person.
- (2) Sub-paragraph (1)(c) applies in relation to a partnership, and any debtor within the meaning of the <sup>M33</sup>Bankruptcy (Scotland) Act 1985, as it applies in relation to an individual.
- (3) In this paragraph—
- “administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986;
- “company” means a company within the meaning of section 735(1) of the <sup>M34</sup>Companies Act 1985 or a company which may be wound up under Part V of the <sup>M35</sup>Insolvency Act 1986.
- “interim trustee” and “permanent trustee” have the same meaning as in the <sup>M36</sup>Bankruptcy (Scotland) Act 1985.



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#### Commencement Information

**I30** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

#### Marginal Citations

**M33** 1985 c. 66.

**M34** 1985 c. 6.

**M35** 1986 c. 45

**M36** 1985 c.66.

15 (1) In this Schedule—

“clearing house” has the same meaning as in the <sup>M37</sup>Financial Services Act 1986;

“investment” and “investment exchange” have the same meaning as in the Financial Services Act 1986;

“recognised” means recognised under the Financial Services Act 1986;

“The Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.

(2) References in this Schedule to ensuring the performance of a transaction have the same meaning as in the Financial Services Act 1986.

(3) References in this Schedule to a market contract to which a person is a party include, unless the contrary intention appears, contracts to which he is party as agent.

#### Commencement Information

**I31** Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

#### Marginal Citations

**M37** 1986 c. 60.

## SCHEDULE 23

Section 206(1).

### CONSEQUENTIAL AMENDMENTS OF THE FINANCIAL SERVICES ACT 1986

#### PART I

##### GENERAL AMENDMENTS

1 (1) Section 13 of the Financial Services Act 1986 (power to direct alteration of rules of recognised self-regulating organisation) is amended as follows.

(2) Omit subsection (1).

(3) For subsection (2) substitute—

*Status: Point in time view as at 10/03/1994.*

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“(2) If at any time it appears to the Secretary of State that—

- (a) a recognised self-regulating organisation is concerned with two or more kinds of investment business, and
- (b) the requirement in paragraph 3(1) of Schedule 2 to this Act is not satisfied in respect of investment business of one or more but not all of those kinds,

he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules so that they preclude a member from carrying on investment business of a kind in respect of which that requirement is not satisfied, unless he is an authorised person otherwise than by virtue of membership of the organisation or is an exempted person in respect of that business.”.

(4) For subsection (3) substitute—

“(3) A direction under this section is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.”.

(5) Omit subsections (4) to (6).

**Modifications etc. (not altering text)**

**C3** Sch. 23 para. 1 restricted by [S.I. 1990/354](#), [art. 6\(2\)\(b\)](#)

2 (1) Section 48 of the Financial Services Act 1986 (conduct of business rules) is amended as follows.

(2) In subsection (1) omit the words “members of a recognised self-regulating organisation or” and “organisation or”.

(3) After subsection (10) insert—

“(11) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.

3 (1) Section 49 of the <sup>M38</sup>Financial Services Act 1986 (financial resources rules) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Secretary of State may make rules requiring—

- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
- (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,

to have and maintain in respect of that business such financial resources as are required by the rules.”.

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(3) After subsection (2) insert—

“(3) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.

#### **Marginal Citations**

**M38** 1986 c. 60.

4 In section 50 of the Financial Services Act 1986 (power of Secretary of State to modify conduct of business and financial resources rules for particular cases), after subsection (3) insert—

“(4) The powers conferred by subsection (1) above shall not be exercised in a case where the powers conferred by section 63B below are exercisable (powers of recognised self-regulating organisation in relation to designated rules).”.

5 In section 52 of the Financial Services Act 1986 (notification regulations), in subsection (3) (application to member of recognised self-regulating organisation or professional body), for “subject to any of the rules made under section 48 above” substitute “not subject to the rules of that organisation or body”.

6 (1) Section 55 of the Financial Services Act 1986 (clients’ money) is amended as follows.

(2) In subsection (2)(b) and (e) omit the words “a member of a recognised self-regulating organisation or” and “organisation or”.

(3) In subsection (3) omit the words “organisation or”.

(4) After subsection (5) insert—

“(6) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.

#### **Modifications etc. (not altering text)**

**C4** Sch. 23 para. 6 restricted by [S.I. 1990/354](#), [art. 6\(4\)](#)

7 In section 56 of the Financial Services Act 1986 (unsolicited calls), for subsection (7) substitute—

“(7) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of

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recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.

As it applies to such persons in respect of such business the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed—

- (a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and
- (b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.

(7A) In the application of this section to anything done by a person certified by a recognised professional body in carrying on investment business in the carrying on of which he is subject to the rules of the body, the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed as a reference to conduct permitted by the rules of the body.”.

- 8 In section 86 of the <sup>M39</sup>Financial Services Act 1986 (collective investment schemes constituted in other member States), in subsection (7) (restriction on application of conduct of business rules), at the end add—

“This subsection also applies to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.”.

#### Marginal Citations

M39 1986 c. 60.

- 9 In section 95 of the Financial Services Act 1986 (collective investment schemes: contraventions), after subsection (2) add—

“(3) The disciplinary action which may be taken by virtue of section 47A(3) (failure to comply with statement of principle) includes—

- (a) the giving of a direction under section 91(2), and
- (b) the application by the Secretary of State for an order under section 93;

and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.”.

- 10 (1) Section 107 of the Financial Services Act 1986 (appointment of auditors) is amended as follows.

- (2) For subsection (1) (power to make rules) substitute—

“(1) The Secretary of State may make rules requiring—

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- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
- (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,

and who, apart from the rules, is not required by or under any enactment to appoint an auditor, to appoint as an auditor a person satisfying such conditions as to qualifications and otherwise as may be specified in or imposed under the rules.”.

(3) After subsection (3) add—

“(4) In its application to members of recognised self-regulating organisations, this section has effect subject to section 107A below.”.

11 After section 107 of the Financial Services Act 1986 insert—

**“107A Application of audit rules to members of self-regulating organisations.**

- (1) The Secretary of State may in rules under section 107 designate provisions which apply, to such extent as may be specified, to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.
- (2) It may be provided that the designated rules have effect, generally or to such extent as may be specified, subject to the rules of the organisation.
- (3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of that section shall be treated as having contravened the rules of the organisation.
- (4) Except as mentioned above, rules made under section 107 do not apply to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.
- (5) A recognised self-regulating organisation may on the application of a member of the organisation—
  - (a) modify a rule designated under this section so as to adapt it to his circumstances or to any particular kind of business carried on by him, or
  - (b) dispense him from compliance with any such rule, generally or in relation to any particular kind of business carried on by him.
- (6) The powers conferred by subsection (5) shall not be exercised unless it appears to the organisation—
  - (a) that compliance with the rule in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
  - (b) that the exercise of those powers will not result in any undue risk to investors.

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- (7) The powers conferred by subsection (5) may be exercised unconditionally or subject to conditions; and subsection (3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule.
- (8) The reference in paragraph 4(1) of Schedule 2 (requirements for recognition of self-regulating organisations) to monitoring and enforcement of compliance with rules includes monitoring and enforcement of compliance with conditions imposed by the organisation under subsection (7).”
- 12 (1) Section 114 of the <sup>M40</sup>Financial Services Act 1986 (power to transfer functions to designated agency) is amended as follows.
- (2) For subsection (9) substitute—
- “(9) The Secretary of State shall not make a delegation order transferring any legislative functions unless—
- (a) the agency has furnished him with a copy of the instruments it proposes to issue or make in the exercise of those functions, and
- (b) he is satisfied that those instruments will afford investors an adequate level of protection and, in the case of such provisions as are mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule.
- In this subsection “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.”
- (3) In subsection (12) for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”.

#### Marginal Citations

**M40** 1986 c. 60.

- 13 (1) Section 115 of the <sup>M41</sup>Financial Services Act 1986 (resumption of transferred functions) is amended as follows.
- (2) For subsection (5) substitute—
- “(5) Where the transferred functions consist of or include any legislative functions, an order may be made under subsection (2) above if at any time it appears to the Secretary of State that the instruments issued or made by the agency do not satisfy the requirements of section 114(9)(b) above.”
- (3) In subsection (7)—
- (a) in the opening words, for “subsection (2)(b) above” substitute “this section”, and
- (b) in paragraph (a) for “functions of making rules or regulations” substitute “functions of issuing or making statements of principle, rules, regulations or codes of practice”.

*Status: Point in time view as at 10/03/1994.*

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#### Marginal Citations

M41 1986 c. 60.

- 14 (1) Section 119 of the Financial Services Act 1986 (competition scrutiny: recognition orders) is amended as follows.
- (2) In subsection (1) (considerations relevant to making of recognition order), for paragraphs (a) and (b) substitute—
- “(a) in the case of a self-regulating organisation, the rules and any guidance of which copies are furnished with the application for the order, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of Chapter V of this Part,
  - (b) in the case of an investment exchange, the rules and any guidance of which copies are furnished with the application for the order, together with any arrangements of which particulars are furnished with the application,
  - (c) in the case of a clearing house, the rules and any guidance of which copies are furnished with the application for the order,”.
- (3) In subsection (2) (circumstances in which powers are exercisable in relation to recognised body), for paragraphs (a) to (c) substitute—
- “(a) in the case of a self-regulating organisation—
    - (i) any rules made or guidance issued by the organisation,
    - (ii) any practices of the organisation, or
    - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the organisation,together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of Chapter V of this Part,
  - (b) in the case of a recognised investment exchange—
    - (i) any rules made or guidance issued by the exchange,
    - (ii) any practices of the exchange, or
    - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the exchange,
  - (c) in the case of a recognised clearing house—
    - (i) any rules made or guidance issued by the clearing house,
    - (ii) any practices of the clearing house, or
    - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the clearing house,or any clearing arrangements made by the clearing house,”.
- (4) In subsection (3) (powers exercisable in relation to recognised body)—
- (a) in paragraph (b) for “the rules” substitute “its rules, or the”, and
  - (b) in paragraph (c) for “the rules” substitute “its rules”.
- (5) In subsection (5) (construction of references to practices)—

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- (a) for “paragraph (b)” substitute “paragraph (a)(ii), (b)(ii) and (c)(ii)”, and
- (b) omit the words from “and the practices referred to in paragraph (c)” to the end.

(6) After that subsection insert—

“(6) The practices referred to in paragraph (a)(iii), (b)(iii) and (c)(iii) of subsection (2) above are—

- (a) in relation to a recognised self-regulating organisation, practices in relation to business in respect of which the persons in question are subject to—

- (i) the rules of the organisation, or

- (ii) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of Chapter V of this Part,

and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation,

- (b) in relation to a recognised investment exchange or clearing house, practices in relation to business in respect of which the persons in question are subject to the rules of the exchange or clearing house, and which are required or contemplated by its rules or guidance,

or which are otherwise attributable to the conduct of the organisation, exchange or clearing house as such.”.

- 15 (1) Section 121 of the <sup>M42</sup>Financial Services Act 1986 (competition scrutiny: designated agencies) is amended as follows.
- (2) In subsection (1) for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.
- (3) In subsection (2)(a) and (c) for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”.
- (4) In subsection (3)(b) for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.
- (5) In subsection (4) for “rules or regulations” (twice) substitute “statements of principle, rules, regulations or codes of practice”.

#### Marginal Citations

M42 1986 c. 60.

- 16 (1) Section 122 of the Financial Services Act 1986 (reports by Director General of Fair Trading) is amended as follows.
- (2) In subsection (1) for “and regulations” substitute “, statements of principle, regulations and codes of practice”.



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- (3) In subsection (2) for “regulations,” substitute “statements of principle, regulations, codes of practice,”.
- (4) In subsection (4)—
- (a) in paragraph (a) for “rules, guidance, arrangements and regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance and arrangements”, and
  - (b) in the words following the paragraphs, for “rules, guidance, arrangements, regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance, arrangements”, and for “rules, guidance, arrangements or regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance or arrangements”.
- 17 (1) Section 124 of the <sup>M43</sup>Financial Services Act 1986 (matters to be left out of account for certain purposes in connection with competition scrutiny) is amended as follows.
- (2) In subsection (1) (matters to be left out of account in determining whether monopoly situation exists), in paragraph (c) for “rules or regulations made or guidance issued” substitute “statements of principle, rules, regulations, codes of practice or guidance issued or made”.
- (3) In subsection (3) (matters to be excluded from consideration where monopoly situation exists)—
- (a) in paragraph (a), for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”,
  - (b) in paragraph (b), for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”, and
  - (c) in the closing words, for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.

**Marginal Citations**

**M43** 1986 c. 60.

- 18 For section 205 of the Financial Services Act 1986 (regulations, rules and orders) substitute—

**“205 General power to make regulations.**

The Secretary of State may make regulations prescribing anything which by this Act is authorised or required to be prescribed.

**205A Supplementary provisions with respect to subordinate legislation.**

- (1) The following provisions apply to any power of the Secretary of State under this Act—
- (a) to issue statements of principle,
  - (b) to make rules or regulations,

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- (c) to make orders (other than such orders as are excepted by subsection (4) below), or
    - (d) to issue codes of practice.
  - (2) Any such power is exercisable by statutory instrument and includes power to make different provision for different cases.
  - (3) Except as otherwise provided, a statutory instrument containing statements of principle, rules or regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (4) The above provisions do not apply to a recognition order, an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme or to an order revoking any such order.”.
- 19 In section 206(1) of the Financial Services Act 1986 (publication of information and advice)—
- (a) in paragraph (a), for “rules and regulations made” substitute “statements of principle, rules, regulations and codes of practice issued or made”, and
  - (b) in paragraph (b) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.
- 20 In Schedule 2 to the Financial Services Act 1986 (requirements for recognition of self-regulating organisations), in paragraph 4(1) (monitoring and enforcement) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.
- 21 In Schedule 3 to the <sup>M44</sup>Financial Services Act 1986 (requirements for recognition of professional bodies), in paragraph 4(2) (monitoring and enforcement) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.

#### Marginal Citations

**M44** 1986 c. 60.

- 22 In Schedule 7 to the Financial Services Act 1986 (qualifications of designated agency), in paragraph 2(2) (arrangements for discharge of functions: matters to be decided upon by the governing body) for “rules or regulations must be made” substitute “statements of principle, rules, regulations and codes of practice must be issued or made”.
- 23 (1) Schedule 8 to the Financial Services Act 1986 (principles applicable to designated agency’s rules and regulations) is amended as follows.
- (2) In the heading for “Rules and Regulations” substitute “Legislative Provisions”.
  - (3) For paragraph 1, and the cross-heading preceding it, substitute—

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## Introduction

- “1 (1) In this Schedule “legislative provisions” means the provisions of statements of principle, rules, regulations and codes of practice issued or made under Part I of this Act.
- (2) References in this Schedule to “conduct of business provisions” are to rules made under section 48 of this Act and statements of principle and codes of practice so far as they relate to matters falling within that rule-making power.
- (3) References in this Schedule to provisions made for the purposes of a specified section or Chapter are to rules or regulations made under that section or Chapter and statements of principle and codes of practice so far as they relate to matters falling within that power to make rules or regulations.

## Standards

- 1A The conduct of business provisions and the other legislative provisions must promote high standards of integrity and fair dealing in the conduct of investment business.”
- (4) In paragraphs 2 to 7, 9, 11 and 12 for “conduct of business rules” substitute “conduct of business provisions”.
- (5) In paragraph 7 for “those rules and rules under” substitute “those provisions and provisions made for the purposes of”.
- (6) In paragraph 8 for “Rules made under” substitute “Provisions made for the purposes of”.
- (7) In paragraph 9 for “regulations made under” substitute “provisions made for the purposes of”.
- (8) In paragraph 10 for “Rules made under” substitute “Provisions made for the purposes of” and for “under those sections” substitute “for the purposes of those sections”.
- (9) In paragraph 12 for “rules and regulations made under” substitute “provisions made for the purposes of”.
- 24 (1) Schedule 9 to the Financial Services Act 1986 (designated agency: exercise of transferred functions) is amended as follows.
- (2) In paragraph 4(1) (copies of instruments to be sent to Secretary of State), for “any rules or regulations made” substitute “any statements of principle, rules, regulations or codes of practice issued or made”.
- (3) For paragraphs 5 and 6 substitute—
- “5 Paragraphs 6 to 9 below have effect instead of section 205A of this Act in relation to statements of principle, rules, regulations and codes of practice issued or made by a designated agency in the exercise of powers transferred to it by a delegation order.

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- 6 Any such power is exercisable by instrument in writing and includes power to make different provision for different cases.”.
- (4) In paragraph 8 (instruments to be printed and made available to public)—
- (a) in sub-paragraph (1) for “is made” substitute “is issued or made”, and
  - (b) in sub-paragraph (2) for “rule or regulation” (twice) substitute “statement of principle, rule, regulation or code of practice”.
- (5) In paragraph 9 (proof of instruments), for “made by the agency” (twice) substitute “made or issued by the agency”.
- (6) For paragraph 12 (consultation) substitute—
- “12 (1) Where a designated agency proposes, in the exercise of powers transferred to it by a delegation order, to issue or make any statements of principle, rules, regulations or codes of practice, it shall publish the proposed instrument in such manner as appears to it best calculated to bring the proposals to the attention of the public, together with a statement that representations about the proposals (and, in particular, representations as to the cost of complying with the proposed provisions) can be made to the agency within a specified time.
- (2) Before issuing or making the instrument the agency shall have regard to any representations duly made in accordance with that statement.
- (3) The above requirements do not apply—
- (a) where the agency considers that the delay involved in complying with them would be prejudicial to the interests of investors;
  - (b) to the issuing or making of an instrument in the same, or substantially the same, terms as a proposed instrument which was furnished by the agency to the Secretary of State for the purposes of section 114(9) of this Act.”.

25 (1) Schedule 10 to the <sup>M45</sup>Financial Services Act 1986 (application of investment business provisions to regulated insurance companies) is amended as follows.

(2) In paragraph 4 (modification of conduct of business rules), after sub-paragraph (2) insert—

“(2A) Sub-paragraphs (1) and (2) also apply to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.”.

(3) In paragraph 7 (withdrawal of authorisation) after sub-paragraph (2) insert—

“(3) The disciplinary action which may be taken by virtue of section 47A(3) of this Act (failure to comply with statement of principle) includes—

    - (a) the withdrawal of authorisation under section 11(2)(a) of the Insurance Companies Act 1982, and
    - (b) the giving of a direction under section 13(2A) of that Act;

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and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.”.

**Marginal Citations**

**M45** 1986 c. 60.

**PART II**

AMENDMENTS RELATING TO FRIENDLY SOCIETIES

26 Schedule 11 to the <sup>M46</sup>Financial Services Act 1986 (friendly societies) is amended as follows.

**Marginal Citations**

**M46** 1986 c. 60.

27 In paragraph 3(2) (competition scrutiny: recognition of self-regulating organisation for friendly societies), after “sent to him under this sub-paragraph” insert “, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of this Schedule.”.

28 (1) Paragraph 4 (requirements for recognition of self-regulating organisation for friendly societies) is amended as follows.

(2) In sub-paragraph (4)—

(a) in paragraph (a) for “22” substitute “22D”, and

(b) omit paragraph (b).

(3) In sub-paragraph (5) for “22” substitute “22D”.

29 Omit paragraph 7.

**Modifications etc. (not altering text)**

**C5** Sch. 23 para. 29 restricted by [S.I. 1990/354](#), [art. 6\(2\)\(b\)](#)

30 (1) Paragraph 10 (competition scrutiny: circumstances in which powers are exercisable in relation to recognised self-regulating organisation for friendly societies) is amended as follows.

(2) In sub-paragraph (1), after paragraph (c) insert “together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of this Schedule.”.

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- (3) In sub-paragraph (2)—
- (a) in paragraph (b), for “the rules” substitute “its rules, or the”, and
  - (c) in paragraph (c), for “the rules” substitute “its rules”.
- (4) In sub-paragraph (3) (construction of references to practices), omit the words from “and the practices referred to in paragraph (c)” to the end; and after that sub-paragraph insert—
- “(3A) The practices referred to in paragraph (c) of sub-paragraph (1) above are practices in relation to business in respect of which the persons in question are subject to—
- (a) the rules of the organisation, or
  - (b) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of this Schedule,
- and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation, or which are otherwise attributable to the conduct of the organisation as such.”.
- 31 In paragraph 13, for “Paragraphs 14 to 25” substitute “Paragraphs 13A to 25”.
- 32 Before paragraph 14 and after the heading “*Conduct of investment business*”, insert—
- “13A(1) The Registrar may issue statements of principle with respect to the conduct expected of regulated friendly societies.
- (2) The conduct expected may include compliance with a code or standard issued by another person, as for the time being in force, and may allow for the exercise of discretion by any person pursuant to any such code or standard.
  - (3) Failure to comply with a statement of principle under this paragraph is a ground for the taking of disciplinary action or the exercise of powers of intervention, but it does not give rise to any right of action by investors or other persons affected or affect the validity of any transaction.
  - (4) The disciplinary action which may be taken by virtue of sub-paragraph (3) is—
    - (a) the making of a public statement under paragraph 21, or
    - (b) the application by the Registrar for an injunction, interdict or other order under paragraph 22(1), or
    - (c) any action under paragraph 26 or 27 of this Schedule;
 and the reference in that sub-paragraph to powers of intervention is to the powers conferred by Chapter VI of Part I of this Act.
  - (5) Where a statement of principle relates to compliance with a code or standard issued by another person, the statement of principle may provide—
    - (a) that failure to comply with the code or standard shall be a ground for the taking of disciplinary action, or the exercise of powers

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- of intervention, only in such cases and to such extent as may be specified; and
- (b) that no such action shall be taken, or any such power exercised, except at the request of the person by whom the code or standard in question was issued.
- (6) The Registrar shall exercise his powers in such manner as appears to him appropriate to secure compliance with statements of principle under this paragraph.
- 13B (1) The relevant regulatory authority may on the application of a regulated friendly society—
- (a) modify a statement of principle issued under paragraph 13A so as to adapt it to the circumstances of the society or to any particular kind of business carried on by it, or
- (b) dispense the society from compliance with any such statement of principle, generally or in relation to any particular kind of business carried on by it.
- (2) The powers conferred by this paragraph shall not be exercised unless it appears to the relevant regulatory authority—
- (a) that compliance with the statement of principle in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
- (b) that the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by this paragraph may be exercised unconditionally or subject to conditions; and paragraph 13A(3) applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle.
- (4) The relevant regulatory authority for the purposes of this paragraph is—
- (a) in the case of a member society of a recognised self-regulating organisation for friendly societies, in relation to investment business in the carrying on of which it is subject to the rules of the organisation, that organisation;
- (b) in any other case, or in relation to other investment business, the Registrar.
- (5) The reference in paragraph 4(1) of Schedule 2 as applied by paragraph 4 above (requirements for recognition of self-regulating organisation for friendly societies) to monitoring and enforcement of compliance with statements of principle includes monitoring and enforcement of compliance with conditions imposed by the organisation under this paragraph.”.
- 33 (1) Paragraph 14 (conduct of business rules) is amended as follows.
- (2) In sub-paragraph (1), omit the words “other than a member society”.
- (3) After sub-paragraph (2) insert—

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“(2A) Paragraph 22B below has effect as regards the application of rules under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.”.

(4) In sub-paragraph (3), omit the word “and” after paragraph (a); and after paragraph (b) insert—

“; and

(c) for the references in subsection (4) to section 63B and a recognised self-regulating organisation there shall be substituted references to paragraph 13B and a recognised self-regulating organisation for friendly societies.”.

34 (1) Paragraph 19 (clients’ money regulations) is amended as follows.

(2) In sub-paragraph (2) for the words from “(but with the substitution” to the end substitute “(but with the substitution for the reference in paragraph (e) of subsection (2) to the Secretary of State of a reference to the Registrar”.

(3) After that sub-paragraph insert—

“(3) Paragraph 22B below has effect as regards the application of regulations under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.”.

**Modifications etc. (not altering text)**

C6 Sch. 23 para. 34 restricted by S.I. 1990/354, art. 6(4)

35 For paragraph 20 (unsolicited calls) substitute—

“20 (1) Regulations under section 56(1) of this Act shall not permit anything to be done by a regulated friendly society but that section shall not apply to anything done by such a society in the course of or in consequence of an unsolicited call which, as respects the society, constitutes the carrying on of regulated business, if it is permitted to be done by the society by regulations made by the Registrar with the consent of the Secretary of State.

(2) Paragraph 22B below has effect as regards the application of regulations under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.

(3) As it applies to such persons in respect of such business, the reference in sub-paragraph (1) above to conduct permitted by regulations made by the Registrar with the consent of the Secretary of State shall be construed—

(a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and



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- (b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.”.

36 After paragraph 22 (and after the paragraph inserted by section 193(3)) insert—

“22B(1) The Registrar may in rules and regulations under—

- (a) paragraph 14 (conduct of business rules),
- (b) paragraph 19 (clients’ money regulations), or
- (c) paragraph 20 (regulations as to unsolicited calls),

designate provisions which apply, to such extent as may be specified, to a member society in respect of investment business in the carrying on of which it is subject to the rules of a recognised self-regulating organisation for friendly societies.

- (2) It may be provided that the designated rules or regulations have effect, generally or to such extent as may be specified, subject to the rules of the organisation.
- (3) A member society which contravenes a rule or regulation applying to it by virtue of this paragraph shall be treated as having contravened the rules of the relevant recognised self-regulating organisation for friendly societies.
- (4) It may be provided that, to such extent as may be specified, the designated rules or regulations may not be modified or waived (under paragraph 22C below or section 50) in relation to a member society.

Where such provision is made any modification or waiver previously granted shall cease to have effect, subject to any transitional provision or saving contained in the rules or regulations.

- (5) Except as mentioned in sub-paragraph (1), the rules and regulations referred to in that sub-paragraph do not apply to a member society in respect of investment business in the carrying on of which it is subject to the rules of a recognised self-regulating organisation for friendly societies.

22C(1) A recognised self-regulating organisation for friendly societies may on the application of a society which is a member of the organisation—

- (a) modify a rule or regulation designated under paragraph 22B so as to adapt it to the circumstances of the society or to any particular kind of business carried on by it, or
- (b) dispense the society from compliance with any such rule or regulation, generally or in relation to any particular kind of business carried on by it.

- (2) The powers conferred by this paragraph shall not be exercised unless it appears to the organisation—

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- (a) that compliance with the rule or regulation in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
  - (b) that the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by this paragraph may be exercised unconditionally or subject to conditions; and paragraph 22B(3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule or regulation.
- (4) The reference in paragraph 4(1) of Schedule 2 as applied by paragraph 4 above (requirements for recognition of self-regulating organisation for friendly societies) to monitoring and enforcement of compliance with rules and regulations includes monitoring and enforcement of compliance with conditions imposed by the organisation under this paragraph.
- 22D(1) The Registrar may issue codes of practice with respect to any matters dealt with by statements of principle issued under paragraph 13A or by rules or regulations made under any provision of this Schedule.
- (2) In determining whether a society has failed to comply with a statement of principle—
- (a) a failure by it to comply with any relevant provision of a code of practice may be relied on as tending to establish failure to comply with the statement of principle, and
  - (b) compliance by it with the relevant provisions of a code of practice may be relied on as tending to negative any such failure.
- (3) A contravention of a code of practice with respect to a matter dealt with by rules or regulations shall not of itself give rise to any liability or invalidate any transaction; but in determining whether a society's conduct amounts to contravention of a rule or regulation—
- (a) contravention by it of any relevant provision of a code of practice may be relied on as tending to establish liability, and
  - (b) compliance by it with the relevant provisions of a code of practice may be relied on as tending to negative liability.
- (4) Where by virtue of paragraph 22B (application of designated rules and regulations to member societies) rules or regulations—
- (a) do not apply, to any extent, to a member society of a recognised self-regulating organisation for friendly societies, or
  - (b) apply, to any extent, subject to the rules of the organisation,
- a code of practice with respect to a matter dealt with by the rules or regulations may contain provision limiting its application to a corresponding extent.”.

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“29 (1) The Registrar shall not make a transfer order transferring any legislative functions to a transferee body unless—

- (a) the body has furnished him and the Secretary of State with a copy of the instruments it proposes to issue or make in the exercise of those functions, and
- (b) they are both satisfied that those instruments will—
  - (i) afford investors an adequate level of protection,
  - (ii) in the case of provisions corresponding to those mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule, and
  - (iii) take proper account of the supervision of friendly societies by the Registrar under the enactments relating to friendly societies.

(2) In this paragraph “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.”.

38 In paragraph 30(2), for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”.

39 In paragraph 31(6)(c), for “as if the reference to section 205(2) were a reference to paragraph 45(1) below” substitute “as if the reference to section 205A were a reference to paragraph 45(1) and (3) below”.

40 For paragraph 34 substitute—

“34 (1) A transferee body to which the Registrar has transferred any legislative functions may exercise those functions without the consent of the Secretary of State.

(2) In this paragraph “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.”.

41 In paragraph 36 (competition scrutiny: transferee bodies) in sub-paragraphs (1) and (3)(b) for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.

42 In paragraph 38(1) (publication of information and advice)—

- (a) in paragraph (a), for “rules and regulations made” substitute “statements of principle, rules, regulations and codes of practice issued or made”, and
- (b) in paragraph (b) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.

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- 43 In paragraph 45—
- (a) in sub-paragraph (1) for “make regulations, rules or orders” substitute “issue or make statements of principle, rules, regulations, orders or codes of practice”, and
  - (b) in sub-paragraph (3) for “regulations, rules or orders” substitute “statements of principle, rules, regulations, orders or codes of practice.”.

## SCHEDULE 24

Section 212.

### REPEALS

#### Modifications etc. (not altering text)

**C7** Sch. 24 restricted by [S.I. 1990/354](#), [art. 6\(4\)](#)

#### Commencement Information

**I32** Sch. 24 partly in force: Sch. 24 in force for certain purposes at 1.7.1991 by s. 215(2) and [S.I. 1991/488](#), [art. 2\(4\)](#); Sch. 24 partly in force for certain purposes at 1.10.1991 and 1.11.1991 see s. 215 and [S.I. 1991/1996](#), [art. 2\(1\)\(2\)](#); Sch. 24 in force for certain purposes at 3.7.1995 see s. 215 and [S.I. 1995/1352](#), [art. 3\(c\)\(i\)\(ii\)](#)

Chapter	Short title	Extent of repeal
1964 c. 40.	Harbours Act 1964.	In section 42(6), the words “required to be attached to a company’s balance sheet”.
1973 c. 41.	Fair Trading Act 1973.	Section 46(3). In section 71, in subsection (1) the words “made under section 69(4) of this Act” and subsection (2). In section 74(1), the words from “and does not” to “section 69(4) of this Act”. In section 85, subsection (5) and, in subsection (6), paragraph (b) and the word “or” preceding it. In section 88(6), the words from “the relevant parties” to the “and” immediately following paragraph (c). In section 89(2), the words “Part II of”.

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		In Schedule 9, in paragraph 4 the words from “either” to the end.
1985 c. 6.	Companies Act 1985.	Section 160(3).
1985 c. 6— <i>cont.</i>	Companies Act 1985— <i>cont.</i>	In section 169(5), the words from “, during business hours” to “for inspection”.
		In section 175(6)(b), the words from “during business hours” to “period”.
		In section 191—
		(a) in subsection (1), the words from “(but” to “for inspection”;
		(b) in subsection (3), paragraphs (a) and (b).
		Section 201.
		In section 202(1), the words “(except where section 201(3) applies)”.
		Section 209(1)(j).
		In section 219(1), the words from “during” to “for inspection”.
		In section 288(3), the words from “during” to “for inspection”.
		In section 318(7), the words from “during” to “for inspection”.
		In section 356—
		(a) in subsection (1), the words “during business hours”;
		(b) subsections (2) and (4).
		In section 383—
		(a) in subsection (1), the words “during business hours”;
		(b) subsection (2);
		(c) in subsection (3), the words from “at a charge” to the end.

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		Section 389.
		Section 435.
		Section 440.
		Section 443(4).
		In section 446—
		(a) in subsection (3), paragraph (b) and the word “and” preceding it;
		(b) subsection (7).
		Section 447(1).
		In section 449(1)—
		(a) the words “or 448”;
		(b) paragraph (e).
		Section 452(1)(b).
		In section 460(1), the words “(inspection of company’s books and papers)” and “under section 440”.
1985 c. 6— <i>cont.</i>	Companies Act 1985— <i>cont.</i>	In section 464(5), at the end of paragraph (c), the word “and”.
		In section 466—
		(a) in subsection (2), paragraph (a) and (d) and the word “or” preceding the latter;
		(b) subsections (4) and (5);
		(c) in subsection (6), the words “falling under subsection (4) of this section”.
		In section 651(1), the words “at any time within 2 years of the date of the dissolution”.
		In section 708(1)(b), the words “or other material”.
		Sections 712 and 715.
		In section 716(2), the words following paragraph (c).
		In section 717(1), the words following paragraph (c).

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In section 733(3), the words from “then” to “216(3)”.

In section 735A(1), the words “440, 449(1)(a) and (d)”.

In section 744, the definitions of “annual return”, “authorised institution”, “authorised minimum”, “expert”, “floating charge”, “joint stock company” and “undistributable reserves”.

In section 746, the words “Except as provided by section 243(6),”.

In Schedule 2—

(a) in paragraph 1(1), the words “paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”;

(b) paragraph 1(5);

(c) in paragraph 2(1), the word “23,”;

(d) paragraph 2(2);

(e) in paragraph 3(1), the words “paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”;

(f) paragraph 3(3);

(g) in paragraph 4(1), the words “(whether as personal representative or otherwise)”;

(h) in paragraph 4(2), the words “paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”.

In Schedule 4, paragraphs 50(6), 53(7), 60 to 70, 74, 75, 77 to 81, 87, 90 to 92 and 95.

In Schedule 9—

(a) paragraphs 1, 13(3) and (18), 16, 18(5), 19(3) to (7) and 21 to 26;

(b) in paragraph 27(4), the words “of the said Part I”;

1985 c. 6—*cont.*

Companies Act 1985—*cont.*

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		(c) in paragraph 28, in sub-paragraph (1) the words “to which Part II of the Insurance Companies Act 1982 applies” and in sub-paragraph (2) the words “of Part I of this Schedule”;
		(d) paragraphs 29 to 31.
		In Schedule 11—
		(a) paragraph 4(b) and (c);
		(b) paragraph 5(b).
		In Schedule 13, in paragraph 25, the words from “during” to “for inspection”.
		Schedule 15.
		In Schedule 22—
		(a) the entry relating to section 36(4);
		(b) in the entry relating to sections 363 to 365, the words “(with Schedule 15)”;
		(c) in the entry relating to sections 384 to 393, in column 2, the word “qualifications”.
		In Schedule 24, the entries relating to sections 245(1), 245(2), 255(5), 260(3), 287(3), 365(3), 384(5), 386(2), 389(10), 390(7), 391(4), 392(2) and 393.
1985 c. 65.	Insolvency Act 1985.	In Schedule 6, paragraphs 7(3), 23 and 45.
1986 c. 45.	Insolvency Act 1986.	In sections 45(5), 53(2), 54(3) and 62(5), the words “and, for continued contravention, to a daily default fine”.
1986 c. 45— <i>cont.</i>	Insolvency Act 1986— <i>cont.</i>	In Schedule 10, the entries in column 5 relating to sections 45(5), 53(2), 54(3) and 62(5).  In Part I of Schedule 13, the entries relating to sections 222(4), 225 and 733(3).



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1986 c. 46.	Company Directors Disqualification Act 1986.	In section 21(2), the words “and section 431 (summary proceedings)”.
1986 c. 53.	Building Societies Act 1986.	In Schedule 15, in paragraph 3(2)(b), the words “, a shadow director”.  In Schedule 18, paragraphs 16 and 17.
1986 c. 60.	Financial Services Act 1986.	In section 13—  (a) subsection (1);  (b) subsections (4) to (6).  In section 48(1), the words “members of a recognised self-regulating organisation or” and “organisation or”.  In section 55—  (a) in subsection (2)(b) and (e), the words “a member of a recognised self-regulating organisation or” and “organisation or”;  (b) in subsection (3), the words “organisation or”.  In section 94—  (a) in subsection (3), the words “except section 435(1) (a) and (b) and (2)”;  (b) in subsection (4), the words “or its affairs”, “and the affairs mentioned in subsection (1) or (2) above” and “or director”.  Section 105(7).  In section 119(5), the words from “and the practices referred to in paragraph (c)” to the end.  In sections 159(1) and 160(1), the words from the beginning to “section 161 below”.  In section 179(3), the word “and” preceding paragraph (i).

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		Section 180(6).
		Section 196(3).
		Section 198(1).
1986 c. 60— <i>cont.</i>	Financial Services Act 1986— <i>cont.</i>	In section 199(9), the words from “and, in relation” to the end.  In Schedule 11— (a) paragraph 4(4)(b); (b) paragraph 7; (c) in paragraph 10(3), the words from “and the practices referred to in paragraph (c)” to the end; (d) in paragraph 14(1), the words “other than a member society”; (e) in paragraph 14(3), the word “and” after paragraph (a).  In Schedule 16, paragraph 22.
1987 c. 22.	Banking Act 1987.	In the Table in section 84(1), the entry relating to persons appointed under section 94, 106 or 177 of the Financial Services Act 1986.  Section 90(1).  In Schedule 6— (a) paragraph 18(1) to (6); (b) in paragraph 18(7), the words “and (1A)”; (c) paragraph 18(8) and (9); (d) in paragraph 27(3), the words “and (6)”.
1987 c. 41.	Criminal Justice (Scotland) Act 1987.	Section 55(a).
1988 c. 1.	Income and Corporation Taxes Act 1988.	Section 565(6)(b).
1988 c. 33.	Criminal Justice Act 1988.	Section 145(a).
1988 c. 48.	Copyright, Designs and Patents Act 1988.	In Schedule 7, paragraph 31.

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