
STATUTORY INSTRUMENTS

2005 No. 1967

The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.

(2) Parts II, III and IV shall come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional or saving provisions as the Department thinks necessary or expedient.

Subordinate Legislation Made

P1 Art. 1(2) power partly exercised: 6.4.2006 appointed for specified provisions by {S.R. 2006/93}, arts. 2, Sch. (with art. 3);
6.4.2007 by {S.R. 2007/95}, art. 2

Interpretation

2.—(1) Subject to paragraph (2), the Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) For the purposes of this Order, section 20(2) of that Act applies as if—

- (a) the words “the liability of whose members is limited” were omitted; and
- (b) any reference to a director included a reference to a shadow director and (where the affairs of a body corporate are managed by its members) to a member of the body in connection with his functions of management.

(3) In this Order—

“the Department” means the Department of Enterprise, Trade and Investment;

“the 1986 Order” means the Companies (Northern Ireland) Order 1986 (NI 6);

“the 1990 Order” means the Companies (Northern Ireland) Order 1990 (NI 5).

PART II

AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS

CHAPTER I

AUDITORS

Recognised supervisory bodies

Additional requirements for recognition of supervisory bodies

3.—(1) Part II of Schedule 11 to the 1990 Order (requirements for recognition of supervisory bodies for purposes of provisions relating to company auditors) is amended as follows.

(2) After paragraph 7(1) (body must have rules and practices for ensuring company audit work is carried out with integrity and without conflicts of interest) insert—

“(1A) The body must participate in arrangements within paragraph 17, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.”.

(3) In paragraph 8 (body must have rules and practices as to the technical standards to be applied in company audit work), the existing provisions become sub-paragraph (1), and after that sub-paragraph insert—

“(2) The body must participate in arrangements within paragraph 18, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.”.

(4) After paragraph 10 insert—

“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.”.

(5) After paragraph 12 insert—

“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.”.

Arrangements to which additional requirements for recognition relate

4. After Part II of Schedule 11 to the 1990 Order (which is amended by Article 3) insert—

“PART III

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—

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- (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c. 8)), or
- (b) any other 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—

- (a) paragraph 17(b),
- (b) paragraph 18(b),
- (c) paragraph 19(1)(b), or
- (d) 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.

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.”.

Delegation of functions of Department in relation to auditors

Delegation of functions by Department to new or existing body

5.—(1) Article 48 of the 1990 Order (delegation of functions of Department) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The Department may make an order under this Article (a “delegation order”) for the purpose of enabling functions of the Department under this Part to be exercised by a body designated by the order.

(1A) The body so designated may be either—

- (a) a body corporate which is established by the order, or
- (b) subject to Article 48A, a body (whether a body corporate or an unincorporated association) which is already in existence (“an existing body”).”.

(3) In paragraph (2) (effect of delegation order on body established by it), for “established” substitute “designated”.

(4) For paragraph (6) substitute—

“(6) Where a delegation order is made, the provisions of Schedule 13 have effect with respect to—

- (a) the status of the body designated by the order in exercising functions of the Department under this Part;
- (b) the constitution and proceedings of the body where it is established by the order;
- (c) the exercise by the body of certain functions transferred to it; and
- (d) other supplementary matters.”.

Circumstances in which the Department may delegate functions to existing body

6. After Article 48 of the 1990 Order (which is amended by Article 5) insert—

“Circumstances in which the Department may delegate functions to existing body

48A.—(1) The Department's power to make a delegation order under Article 48 which designates an existing body is exercisable in accordance with this Article.

(2) The Department may make such an order if it appears to the Department—

- (a) that the body is willing and able to exercise the functions that would be transferred by the order; and

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- (b) that the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in paragraph (3) are met.
- (3) The conditions are—
 - (a) that the functions in question will be exercised effectively; and
 - (b) where the delegation order is to contain any requirements or other provisions specified under paragraph (4), that those functions will be exercised in accordance with any such requirements or provisions.
- (4) The delegation order may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Department to be appropriate.
- (5) An existing body—
 - (a) may be designated by a delegation order under Article 48, and
 - (b) may accordingly exercise functions of the Department in pursuance of the order, despite any involvement of the body in the exercise of any functions under arrangements within any of paragraphs 17, 18, 19(1) or 20(1) of Schedule 11.”.

Supplementary provisions about delegation orders

7.—(1) Schedule 13 to the 1990 Order (supplementary provisions with respect to delegation orders) is amended as follows.

- (2) For paragraph 1 substitute—

“Operation of this Schedule

- 1.—(1) This Schedule has effect in relation to a body designated by an order under Article 48 as follows—
 - (a) paragraphs 2 to 12 have effect in relation to the body where it is established by the order;
 - (b) paragraphs 2 and 6 to 11 have effect in relation to the body where it is an existing body (see Article 48(1A)(b)); and
 - (c) paragraph 13 has effect in relation to the body where it is an existing body that is an unincorporated association.
- (2) In their operation in accordance with sub-paragraph (1)(b), paragraphs 2 and 6 apply only in relation to—
 - (a) things done by or in relation to the body in or in connection with the exercise of functions transferred to it by the order, and
 - (b) functions of the body which are functions so transferred.
- (3) Any power conferred by this Schedule to make provision by order is a power to make provision by an order under Article 48.”.
- (3) In paragraph 10 (report and accounts)—
 - (a) after sub-paragraph (2) insert—
 - “(2A) The following provisions of this paragraph apply as follows—
 - (a) sub-paragraphs (3) and (4) apply only where the body is established by the order, and

- (b) sub-paragraphs (5) and (6) apply only where the body is an existing body.”; and
- (b) after sub-paragraph (4) insert—
- “(5) Unless the body is a company to which Article 234 of the 1986 Order (duty to prepare individual company accounts) applies—
- (a) the Department may, with the consent of the Department of Finance and Personnel, give directions to the body with respect to its accounts and the audit of its accounts, and
- (b) it is the duty of the body to comply with the directions.
- (6) Whether or not the body is a company to which Article 234 of the 1986 Order applies—
- (a) the Department may give directions to the body providing that any provisions of that Order specified in the directions are to apply to the body, with or without any modifications so specified, and
- (b) it is the duty of the body to comply with the directions.”.
- (4) In paragraph 11 (other supplementary provisions), for “established” (in both places) substitute “designated ”.
- (5) After paragraph 12 insert—

“13.—(1) This paragraph applies where the body is an unincorporated association.

(2) Any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.

(3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any transferred function.

(4) In relation to proceedings brought as mentioned in sub-paragraph (2), any reference in paragraph 11(3)(e) or (4)(c) to the body replacing or being replaced by the Department in any legal proceedings is to be read with the appropriate modifications.”.

Auditors' qualifications

Approval of overseas qualifications for auditors

8.—(1) Article 36 of the 1990 Order (approval of overseas qualifications) is amended as follows.

(2) For paragraphs (1) and (2) substitute—

“(1) The Department may declare that the following are to be regarded for the purposes of this Part as holding an approved overseas qualification—

(a) persons who are qualified to audit accounts under the law of a specified country or territory outside the United Kingdom;

(b) persons who hold a specified professional qualification in accountancy obtained in a specified country or territory outside the United Kingdom.

(1A) Approval of a qualification under paragraph (1)(b) may be expressed to be subject to any specified requirement or requirements being satisfied.

(2) A qualification must not be approved under paragraph (1) unless the Department is satisfied that the qualification, taken with any requirement or requirements to be specified under paragraph (1A), affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.”.

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(3) For paragraph (6) substitute—

“(6) The Department may if it thinks fit, having regard to the considerations mentioned in paragraphs (2) and (3)—

- (a) withdraw its approval of an overseas qualification in relation to persons becoming qualified as mentioned in paragraph (1)(a), or obtaining such a qualification as is mentioned in paragraph (1)(b), after such date as it may specify; or
- (b) vary or revoke a requirement mentioned in paragraph (1A) from such date as it may specify.”.

Services provided by auditors

Disclosure of services provided by auditors and related remuneration

9.—(1) For Article 398B of the 1986 Order (remuneration of auditors or their associates for non-audit work) substitute—

“Disclosure of services provided by auditors or associates and related remuneration

398B.—(1) The Department may make provision by regulations for securing the disclosure of—

- (a) the nature of any services provided for a company by the company's auditors (whether in their capacity as such or otherwise) or by their associates;
- (b) the amount of any remuneration received or receivable by a company's auditors, or their associates, in respect of any services within sub-paragraph (a).

(2) The regulations may provide—

- (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described);
- (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described);
- (c) for the disclosure of separate amounts so received or receivable by the company's auditors or any of their associates, or of aggregate amounts so received or receivable by all or any of those persons.

(3) The regulations may—

- (a) provide that “remuneration” includes sums paid in respect of expenses;
- (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value;
- (c) apply to services provided for associates of a company as well as to those provided for a company;
- (d) define “associate” in relation to an auditor and a company respectively.

(4) The regulations may provide that any disclosure required by the regulations is to be made—

- (a) in a note to the company's annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
- (b) in the directors' report required by Article 242, or
- (c) in the auditors' report under Article 243.

- (5) If the regulations provide that any such disclosure is to be made as mentioned in paragraph (4)(a) or (b), the regulations may—
- (a) require the auditors to supply the directors of the company with any information necessary to enable the disclosure to be made;
 - (b) provide for any provision within paragraph (6) to apply in relation to a failure to make the disclosure as it applies in relation to a failure to comply with a requirement of this Order or (as the case may be) a provision of Part VIII.
- (6) The provisions are—
- (a) Articles 241(5) and 242(5); and
 - (b) any provision of Articles 253 to 253C.
- (7) Nothing in paragraphs (2) to (6) affects the generality of paragraph (1).
- (8) Regulations under this Article shall be subject to negative resolution.”.
- (2) In Article 398A of the 1986 Order (remuneration of auditors)—
- (a) paragraph (3) (auditors' remuneration to be disclosed in note to accounts) accordingly ceases to have effect, and
 - (b) in paragraph (5) (application to benefits in kind), for the words from “payments in cash” onwards substitute “ payments of money. ”.
- (3) In paragraph 1(1) of Schedule 4A to that Order (form and contents of group accounts), omit “Article 398A(3) (amount of auditors' remuneration) and”.

CHAPTER II

ACCOUNTS AND REPORTS

Auditing of accounts

Auditors' rights to information

- 10.** For Article 397A of the 1986 Order (rights to information) substitute—

“Rights to information

- 397A.**—(1) An auditor of a company—
- (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
 - (b) may require any of the persons mentioned in paragraph (2) to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.
- (2) Those persons are—
- (a) any officer or employee of the company;
 - (b) any person holding or accountable for any of the company's books, accounts or vouchers;
 - (c) any subsidiary undertaking of the company which is a body corporate incorporated in Northern Ireland;
 - (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;

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(e) any person who fell within any of sub-paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate.

(3) Where a parent company has a subsidiary undertaking which is not a body corporate incorporated in Northern Ireland, the auditor of the parent company may require it to obtain from any of the persons mentioned in paragraph (4) such information or explanations as he may reasonably require for the purposes of his duties as auditor.

(4) Those persons are—

- (a) the undertaking;
- (b) any officer, employee or auditor of the undertaking;
- (c) any person holding or accountable for any of the undertaking's books, accounts or vouchers;
- (d) any person who fell within sub-paragraph (b) or (c) at a time to which the information or explanations relates or relate.

(5) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person within paragraph (4) from whom the auditor has required the company to obtain the information or explanations.

(6) A statement made by a person in response to a requirement under paragraph (1)(b) or (3) may not be used in evidence against him in any criminal proceedings except proceedings for an offence under Article 397B.

(7) Nothing in this Article or Article 397B compels any person to disclose information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.

Offences relating to the provision of information to auditors

397B.—(1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—

- (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under Article 397A(1)(b), and
- (b) is misleading, false or deceptive in a material particular,

the person is guilty of an offence and liable to imprisonment or a fine, or both.

(2) A person who fails to comply with a requirement under Article 397A(1)(b) without delay is guilty of an offence and is liable to a fine.

(3) However, it is a defence for a person charged with an offence under paragraph (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.

(4) If a company fails to comply with Article 397A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Nothing in this Article affects any right of an auditor to apply for an injunction to enforce any of his rights under Article 397A.”.

Statement in directors' report as to disclosure of information to auditors

11.—(1) Part VIII of the 1986 Order (accounts and audit) is amended as follows.

(2) In Article 242 (duty to prepare directors' report), after paragraph (2) insert—

“(2A) If Article 242ZA applies to the report, it shall contain the statement required by paragraph (2) of that Article.”.

(3) After Article 242 insert—

“Statement as to disclosure of information to auditors

242ZA.—(1) This Article applies to a directors' report unless the directors have taken advantage of the exemption conferred by Article 257A(1) or 257AA(1).

(2) The report must contain a statement to the effect that, in the case of each of the persons who are directors at the time when the report is approved under Article 242A, the following applies—

- (a) so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and
- (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditors are aware of that information.

(3) In paragraph (2) “relevant audit information” means information needed by the company's auditors in connection with preparing their report.

(4) For the purposes of paragraph (2) a director has taken all the steps that he ought to have taken as a director in order to do the things mentioned in sub-paragraph (b) of that paragraph if he has—

- (a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and
- (b) taken such other steps (if any) for that purpose,

as were required by his duty as a director of the company to exercise due care, skill and diligence.

(5) In determining for the purposes of paragraph (2) the extent of that duty in the case of a particular director, the following considerations (in particular) are relevant—

- (a) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by the director in relation to the company, and
- (b) (so far as they exceed what may reasonably be so expected) the knowledge, skill and experience that the director in fact has.

(6) Where a directors' report containing the statement required by paragraph (2) is approved under Article 242A but the statement is false, every director of the company who—

- (a) knew that the statement was false, or was reckless as to whether it was false, and
- (b) failed to take reasonable steps to prevent the report from being approved,

is guilty of an offence and liable to imprisonment or a fine, or both.”.

Defective accounts

Persons authorised to apply to court in connection with defective accounts

12.—(1) Article 253C of the 1986 Order (other persons authorised to apply to court) is amended as follows.

(2) After paragraph (1) insert—

“(1A) But where the order giving authorisation is to contain any requirements or other provisions specified under paragraph (4A), the Department may not authorise a person unless, in addition, it appears to the Department that the person would, if authorised,

exercise his functions as an authorised person in accordance with any such requirements or provisions.”.

(3) After paragraph (4) insert—

“(4A) An order under paragraph (4) may contain such requirements or other provisions relating to the exercise of functions by the authorised person as appear to the Department to be appropriate.

(4B) If the authorised person is an unincorporated association, any relevant proceedings may be brought by or against that association in the name of any body corporate whose constitution provides for the establishment of the association.

(4C) For the purposes of paragraph (4B) “relevant proceedings” means proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person.”.

Power of person authorised to require documents, information and explanations

13.—(1) After Article 253E of the 1986 Order (restrictions on use and further disclosure of information disclosed under Article 253D) insert—

“Power of authorised persons to require documents, information and explanations

253F.—(1) This Article applies where it appears to a person who is authorised under Article 253C that there is, or may be, a question whether the annual accounts of a company comply with the requirements of this Order.

(2) The authorised person may require any of the persons mentioned in paragraph (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—

- (a) discovering whether there are grounds for an application to the court under Article 253B; or
- (b) determining whether or not to make such an application.

(3) Those persons are—

- (a) the company;
- (b) any officer, employee, or auditor of the company;
- (c) any persons who fell within sub-paragraph (b) at a time to which the document or information required by the authorised person relates.

(4) If a person fails to comply with a requirement under paragraph (2), the authorised person may apply to the court for an order under paragraph (5).

(5) If on such an application the court decides that the person has failed to comply with the requirement under paragraph (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.

(6) A statement made by a person in response to a requirement under paragraph (2) or an order under paragraph (5) may not be used in evidence against him in any criminal proceedings.

(7) Nothing in this Article compels any person to disclose documents or information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.

(8) In this Article “document” includes information recorded in any form.

Restrictions on further disclosure of information obtained under Article 253F

- 253G.**—(1) This Article applies to information (in whatever form) which—
- (a) has been obtained in pursuance of a requirement or order under Article 253F, and
 - (b) relates to the private affairs of an individual or to any particular business.
- (2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (3) Paragraph (2) does not apply to any disclosure of information which—
- (a) is made for the purpose of facilitating the carrying out by a person authorised under Article 253C of his functions under Article 253B;
 - (b) is made to a person specified in Part I of Schedule 7B;
 - (c) is of a description specified in Part II of that Schedule; or
 - (d) is made in accordance with Part III of that Schedule.
- (4) The Department may by order amend Schedule 7B.
- (5) An order under paragraph (4) must not—
- (a) amend Part I of Schedule 7B by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
 - (b) amend Part II of Schedule 7B by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
 - (c) amend Part III of Schedule 7B so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
- (6) An order under paragraph (4) shall be subject to negative resolution.
- (7) A person who discloses any information in contravention of this Article—
- (a) is guilty of an offence, and
 - (b) is liable on conviction to imprisonment or a fine, or both.
- (8) However, it is a defence for a person charged with an offence under paragraph (7) to prove—
- (a) that he did not know, and had no reason to suspect, that the information had been disclosed under Article 253F; or
 - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (9) Articles 680, 680A and 680B apply to offences under this Article.
- (10) This Article does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (11) Nothing in this Article authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).”.
- (2) Schedule 1 (which inserts Schedule 7B in the 1986 Order) has effect.

*Directors' reports***Power to specify bodies who may issue reporting standards**

14. In Article 265 of the 1986 Order (power of Department to alter accounting requirements), after paragraph (4) insert—

“(4A) Regulations under this Article may also make provision—

- (a) for the issuing, by such body or bodies as may be specified, of standards in relation to matters to be contained in reports which are required by this Part to be prepared by the directors of a company;
- (b) for directors of a company who have complied with any such standard, or any of its provisions, in relation to any such report, to be presumed (unless the contrary is proved) to have complied with any requirements of this Part relating to the contents of the report to which the standard or provision relates.

(4B) In paragraph (4A) “specified” means specified in an order made by the Department; and such an order—

- (a) shall be made subject to negative resolution;
- (b) may contain such transitional provisions as the Department thinks fit.”.

Application of provisions inserted by Article 13 to certain bodies

15.—(1) Section 15 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (application of certain provisions to bodies appointed under section 14 of that Act) is amended as follows.

(2) In subsection (1) at the end add “and

(d) Articles 253F and 253G of and Schedule 7B to the 1986 Order.”.

(3) After subsection (5) insert—

“(5A) Articles 253F and 253G of and Schedule 7B to the 1986 Order apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under Article 253C of that Order and the functions of such persons mentioned in Article 253F(2), Article 253G(3)(a) of and paragraph 16 of Schedule 7B to that Order.

(5B) But Article 253F so applies as if—

- (a) paragraph (1) of that Article provided that the Article applies where it appears to a prescribed body that there is, or may be, a question whether any relevant accounts or reports produced by an issuer of listed securities comply with any accounting requirements imposed by listing rules; and
- (b) the references in Article 253F(3)(a) and (b) to “the company” were references to that issuer.”.

(4) In subsection (6) after “subsection (5)” insert “ and subsection (5B) ”.

*Bodies concerned with accounting standards etc.***Grants to bodies concerned with accounting standards etc.**

16.—(1) The Department may make grants to any body carrying on activities concerned with any of the matters set out in paragraph (2).

(2) The matters are—

- (a) issuing accounting standards;
 - (b) issuing standards in respect of matters to be contained in reports required to be produced by auditors or company directors;
 - (c) investigating departures from standards within sub-paragraph (a) or (b) or from the accounting requirements of the 1986 Order or any requirements of directly applicable Community legislation relating to company accounts;
 - (d) taking steps to secure compliance with such standards or requirements;
 - (e) keeping under review periodic accounts and reports that are produced by issuers of listed securities and are required to comply with any accounting requirements imposed by listing rules;
 - (f) establishing, maintaining or carrying out arrangements within paragraph 17, 18, 19(1) or 20(1) of Schedule 11 to the 1990 Order;
 - (g) exercising functions of the Department under Part III of that Order;
 - (h) carrying out investigations into public interest cases arising in connection with the performance of accountancy functions by members of professional accountancy bodies;
 - (i) holding disciplinary hearings relating to members of such bodies following the conclusion of such investigations;
 - (j) deciding whether (and, if so, what) disciplinary action should be taken against members of such bodies to whom such hearings related;
 - (k) supervising the exercise by such bodies of regulatory functions in relation to their members;
 - (l) overseeing or directing any of the matters mentioned above.
- (3) A grant may be made to a body within paragraph (1) in respect of any of its activities.
- (4) For the purposes of this Article—
- (a) a body is to be regarded as carrying on any subsidiary activities of the body; and
 - (b) a body's "subsidiary activities" are activities carried on by any of its subsidiaries or by any body established under its constitution or under the constitution of such a subsidiary.
- (5) In this Article—
- "accountancy functions" means functions performed as an accountant, whether in the capacity of auditor or otherwise;
- "company" means a company within the meaning of the 1986 Order;
- "issuer", "listing rules" and "security" have the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation of Part 6);
- "professional accountancy body" means—
- (a) a supervisory body which is recognised for the purposes of Part III of the 1990 Order, or
 - (b) a qualifying body, as defined by Article 35 of that Order, which enforces rules as to the performance of accountancy functions by its members,
- and references to the members of professional accountancy bodies include persons who, although not members of such bodies, are subject to their rules in performing accountancy functions;
- "public interest cases" means matters which raise or appear to raise important issues affecting the public interest;
- "regulatory functions", in relation to professional accountancy bodies, means any of the following functions—

Status: Point in time view as at 06/04/2007.

Changes to legislation: There are currently no known outstanding effects for the The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed). (See end of Document for details)

- (a) investigatory or disciplinary functions exercised by such bodies in relation to the performance by their members of accountancy functions,
- (b) the setting by such bodies of standards in relation to the performance by their members of accountancy functions, and
- (c) the determining by such bodies of requirements in relation to the education and training of their members;

“subsidiary” has the meaning given by Article 4 of the 1986 Order.

(6) Omit Article 264(3) of the 1986 Order (grants to bodies concerned with issuing accounting standards etc.) which is superseded by this Article.

Exemption from liability

17.—(1) Where a grant has been paid by the Department to a body under Article 16, this Article prevents any liability in damages arising in respect of certain acts or omissions occurring during the period of 12 months beginning with the date on which the grant was paid.

(2) In this Article—

“Article 16(2) activities” means activities concerned with any of the matters set out in Article 16(2);

“the exemption period” means the period of 12 months mentioned in paragraph (1);

“a relevant body” means the body mentioned in that paragraph or a body carrying on any subsidiary activities of that body (within the meaning of Article 16).

(3) Neither a relevant body, nor any person who is (or is acting as) a member, officer or member of staff of a relevant body, is to be liable in damages for anything done, or omitted to be done, during the exemption period for the purposes of or in connection with—

- (a) the carrying on of any Article 16(2) activities of the body, or
- (b) the purported carrying on of any such activities.

(4) Paragraph (3) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent an award of damages in respect of the act or omission on the grounds that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights).

CHAPTER III

DIRECTORS' LIABILITIES

Relaxation of prohibition on provisions protecting directors etc. from liability

18.—(1) After Article 317 of the 1986 Order (directors to have regard to interests of employees) insert—

“Provisions protecting directors from liability

317A.—(1) This Article applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.

(2) Any provision which purports to exempt (to any extent) a director of a company from any liability within paragraph (1) is void.

(3) Subject to paragraphs (4) and (5), any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—

- (a) the company, or
- (b) an associated company,

against any liability within paragraph (1) is void.

(4) Paragraph (3) does not apply to a qualifying third party indemnity provision within the meaning of Article 317B(1).

(5) Paragraph (3) does not prevent a company from purchasing and maintaining for a director of—

- (a) the company, or
- (b) an associated company,

insurance against any liability within paragraph (1).

(6) In this Article—

“associated company”, in relation to a company (“C”), means a company which is C's subsidiary, or C's holding company or a subsidiary of C's holding company;

“provision” means a provision of any nature, whether or not it is contained in a company's articles or in any contract with a company.

Qualifying third party indemnity provisions

317B.—(1) For the purposes of Article 317A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in Article 317A(3) in relation to which conditions A to C are satisfied.

(2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) to the company, or
- (b) to any associated company.

(3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—

- (a) a fine imposed in criminal proceedings, or
- (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising).

(4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) in defending any criminal proceedings in which he is convicted, or
- (b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
- (c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—
 - (i) Article 154(3) or (4), or
 - (ii) Article 675.

(5) In sub-paragraph (a), (b) or (c) of paragraph (4) the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.

(6) For the purposes of paragraph (5) a conviction, judgment or refusal of relief becomes final—

Status: Point in time view as at 06/04/2007.

Changes to legislation: There are currently no known outstanding effects for the The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed). (See end of Document for details)

- (a) if not appealed against, at the end of the period for bringing an appeal, or
- (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (7) An appeal is disposed of—
 - (a) if it is determined and the period for bringing any further appeal has ended, or
 - (b) if it is abandoned or otherwise ceases to have effect.
- (8) In this Article “associated company” and “provision” have the same meaning as in Article 317A.

Disclosure of qualifying third party indemnity provisions

317C.—(1) Paragraphs (2) and (3) impose disclosure requirements in relation to a directors' report under Article 242 in respect of a financial year.

- (2) If —
 - (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or
 - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of the company,

the report must state that any such provision is or (as the case may be) was so in force.

- (3) If the company has made a qualifying third party indemnity provision and—
 - (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or
 - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of an associated company,

the report must state that any such provision is or (as the case may be) was so in force.

(4) Paragraph (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.

- (5) Article 326 shall apply to—
 - (a) the company, and
 - (b) if the director is a director of an associated company, the associated company,

as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in Article 326(1).

- (6) In this Article—
 - “associated company” and “provision” have the same meaning as in Article 317A; and
 - “qualifying third party indemnity provision” has the meaning given by Article 317B(1).”.

(2) In Article 318 of that Order (provisions exempting officers and auditors from liability), the following provisions cease to have effect—

- (a) in paragraph (1), the words “any officer of the company or”, and
- (b) in paragraph (3)—
 - (i) the words “officer or” (in both places), and
 - (ii) the words from “Article 154(3)” to “nominee) or”;
 and in the heading, for “exempting officers and” substitute “protecting”.

Commencement Information

- II** Art. 18 wholly in operation at 6.4.2006, see art. 1(2) and S.R. 2006/93 {art. 2}, Sch. (with transitional provision in art. 3)

Funding of director's expenditure on defending proceedings

19. After Article 345 of the 1986 Order (funding of director's expenditure on duty to company) insert—

“Funding of director's expenditure on defending proceedings

345A.—(1) A company is not prohibited by Article 338 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him—

- (a) in defending any criminal or civil proceedings, or
- (b) in connection with any application under any of the provisions mentioned in paragraph (2).

(2) The provisions are—

- (a) Article 154(3) and (4), and
- (b) Article 675.

(3) Nor does Article 338 prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

(4) Paragraphs (1) and (3) only apply to a loan or other thing done as mentioned in those paragraphs if the terms on which it is made or done will result in the loan falling to be repaid, or any liability of the company under any transaction connected with the thing in question falling to be discharged, not later than—

- (a) in the event of the director being convicted in the proceedings, the date when the conviction becomes final,
- (b) in the event of judgment being given against him in the proceedings, the date when the judgment becomes final, or
- (c) in the event of the court refusing to grant him relief on the application, the date when the refusal of relief becomes final.

(5) For the purposes of paragraph (4) a conviction, judgment or refusal of relief becomes final—

- (a) if not appealed against, at the end of the period for bringing an appeal, or
- (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(6) An appeal is disposed of—

- (a) if it is determined and the period for bringing any further appeal has ended, or
- (b) if it is abandoned or otherwise ceases to have effect.”.

CHAPTER IV INVESTIGATIONS

Power to require documents and information

20. For Article 440 of the 1986 Order (Department's power to require production of documents) substitute—

“Power to require documents and information

- 440.**—(1) The Department may act under paragraphs (2) and (3) in relation to a company.
- (2) The Department may give directions to the company requiring it—
- (a) to produce such documents (or documents of such description) as may be specified in the directions;
 - (b) to provide such information (or information of such description) as may be so specified.
- (3) The Department may authorise a person (an investigator) to require the company or any other person—
- (a) to produce such documents (or documents of such description) as the investigator may specify;
 - (b) to provide such information (or information of such description) as the investigator may specify.
- (4) A person on whom a requirement under paragraph (3) is imposed may require the investigator to produce evidence of his authority.
- (5) A requirement under paragraph (2) or (3) must be complied with at such time and place as may be specified in the directions or by the investigator (as the case may be).
- (6) The production of a document in pursuance of this Article does not affect any lien which a person has on the document.
- (7) The Department or the investigator (as the case may be) may take copies of or extracts from a document produced in pursuance of this Article.
- (8) A “document” includes information recorded in any form.
- (9) In relation to information recorded otherwise than in legible form, the power to require production of it includes power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.”.

Protection in relation to certain disclosures

21. After Article 441 of the 1986 Order (entry and search of premises) insert—

“Protection in relation to certain disclosures: information provided to Department

- 441A.**—(1) A person who makes a relevant disclosure is not liable by reason only of that disclosure in any proceedings relating to a breach of an obligation of confidence.
- (2) A relevant disclosure is a disclosure which satisfies each of the following conditions—
- (a) it is made to the Department otherwise than in compliance with a requirement under this Part;

- (b) it is of a kind that the person making the disclosure could be required to make in pursuance of this Part;
 - (c) the person who makes the disclosure does so in good faith and in the reasonable belief that the disclosure is capable of assisting the Department for the purposes of the exercise of its functions under this Part;
 - (d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Department for the purposes of the exercise of those functions;
 - (e) the disclosure is not one falling within paragraph (3) or (4).
- (3) A disclosure falls within this paragraph if the disclosure is prohibited by virtue of any statutory provision.
- (4) A disclosure falls within this paragraph if—
- (a) it is made by a person carrying on the business of banking or by a lawyer, and
 - (b) it involves the disclosure of information in respect of which he owes an obligation of confidence in that capacity.”.

Power to enter and remain on premises

22. After Article 446 of the 1986 Order (investigation of bodies incorporated outside Northern Ireland) insert—

“Power to enter and remain on premises

- 446A.**—(1) An inspector or investigator may act under paragraph (2) in relation to a company if—
- (a) he is authorised to do so by the Department, and
 - (b) he thinks that to do so will materially assist him in the exercise of his functions under this Part in relation to the company.
- (2) An inspector or investigator may at all reasonable times—
- (a) require entry to relevant premises, and
 - (b) remain there for such period as he thinks necessary for the purpose mentioned in paragraph (1)(b).
- (3) Relevant premises are premises which the inspector or investigator believes are used (wholly or partly) for the purposes of the company’s business.
- (4) In exercising his powers under paragraph (2), an inspector or investigator may be accompanied by such other persons as he thinks appropriate.
- (5) A person who intentionally obstructs a person lawfully acting under paragraph (2) or (4)—
- (a) is guilty of an offence, and
 - (b) is liable on conviction to a fine.
- (6) Articles 680, 680A and 680B apply to the offence under paragraph (5).
- (7) An inspector is a person appointed under Article 424, 425 or 435.
- (8) An investigator is a person authorised for the purposes of Article 440.

Power to enter and remain on premises: procedural

- 446B.**—(1) This Article applies for the purposes of Article 446A.

Status: Point in time view as at 06/04/2007.

Changes to legislation: There are currently no known outstanding effects for the The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed). (See end of Document for details)

(2) The requirements of paragraph (3) must be complied with at the time an inspector or investigator seeks to enter relevant premises under Article 446A(2)(a).

(3) The requirements are—

- (a) the inspector or investigator must produce evidence of his identity and evidence of his appointment or authorisation (as the case may be);
- (b) any person accompanying the inspector or investigator must produce evidence of his identity.

(4) The inspector or investigator must, as soon as practicable after obtaining entry, give to an appropriate recipient a written statement containing such information as to—

- (a) the powers of the investigator or inspector (as the case may be) under Article 446A;
- (b) the rights and obligations of the company, occupier and the persons present on the premises,

as may be prescribed by regulations.

(5) If during the time the inspector or investigator is on the premises there is no person present who appears to him to be an appropriate recipient for the purposes of paragraph (8), the inspector or investigator must as soon as reasonably practicable send to the company—

- (a) a notice of the fact and time that the visit took place, and
- (b) the statement mentioned in paragraph (4).

(6) As soon as reasonably practicable after exercising his powers under Article 446A(2), the inspector or investigator must prepare a written record of the visit and—

- (a) if requested to do so by the company he must give it a copy of the record;
- (b) in a case where the company is not the sole occupier of the premises, if requested to do so by an occupier he must give the occupier a copy of the record.

(7) The written record must contain such information as may be prescribed by regulations.

(8) If the inspector or investigator thinks that the company is the sole occupier of the premises an appropriate recipient is a person who is present on the premises and who appears to the inspector or investigator to be—

- (a) an officer of the company, or
- (b) a person otherwise engaged in the business of the company if the inspector or investigator thinks that no officer of the company is present on the premises.

(9) If the inspector or investigator thinks that the company is not the occupier or sole occupier of the premises an appropriate recipient is—

- (a) a person who is an appropriate recipient for the purposes of paragraph (8), and (if different)
- (b) a person who is present on the premises and who appears to the inspector or investigator to be an occupier of the premises or otherwise in charge of them.

(10) Regulations under this Article shall be subject to negative resolution.”.

Failure to comply with certain requirements

23. After Article 446B of the 1986 Order (inserted by Article 22) insert—

“Failure to comply with certain requirements

446C.—(1) This Article applies if a person fails to comply with a requirement imposed by an inspector, the Department or an investigator in pursuance of either of the following provisions—

- (a) Article 440;
- (b) Article 446A.

(2) The inspector, Department or investigator (as the case may be) may certify the fact in writing to the court.

(3) If, after hearing—

- (a) any witnesses who may be produced against or on behalf of the alleged offender;
- (b) any statement which may be offered in defence,

the court is satisfied that the offender failed without reasonable excuse to comply with the requirement, it may deal with him as if he had been guilty of contempt of the court.”.

CHAPTER V

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

Minor and consequential amendments and repeals

24.—(1) Schedule 2 (minor and consequential amendments relating to this Part) has effect.

(2) Schedule 3 (repeals relating to this Part) has effect.

Commencement Information

I2 Art. 24 partly in operation; art. 24 not in operation at date of making, see art. 1(2); art. 24(2) in operation at 6.4.2006 by S.R. 2006/93 {art 2}, Sch.

F1F1 PART III

COMMUNITY INTEREST COMPANIES

F1 Pt. 3 (arts. 25-60) repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1284(2), 1295, 1300(2), Sch. 16; S.I. 2007/1093, art. 5, Sch. 2 Pt. 2

A.K. Galloway
Clerk of the Privy Council

Status:

Point in time view as at 06/04/2007.

Changes to legislation:

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