

## SCHEDULES

### SCHEDULE 1

Article 13

NEW SCHEDULE 7B TO THE COMPANIES (NORTHERN IRELAND) ORDER 1986  
In the 1986 Order, after Schedule 7A insert—

#### “SCHEDULE 7B

#### SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURES ETC. FOR THE PURPOSES OF ARTICLE 253G

### PART I

#### SPECIFIED PERSONS

1. The Secretary of State.
2. The Department.
3. The Treasury.
4. The Bank of England.
5. The Financial Services Authority.
6. The Commissioners of Her Majesty’s Revenue and Customs.

### PART II

#### SPECIFIED DESCRIPTIONS OF DISCLOSURES

7. A disclosure for the purpose of assisting a body designated by an order under Article 48 of the [Companies \(Northern Ireland\) Order 1990 \(NI 5\)](#) (delegation of functions of Department) to exercise its functions under Part III of that Order.

8. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by an accountant or auditor of his professional duties.

9. A disclosure for the purpose of enabling or assisting the Department or the Treasury to exercise any of its functions under any of the following—

- (a) this Order;
- (b) the insider dealing legislation;
- (c) the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#);
- (d) the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#);
- (e) the Financial Services and Markets Act 2000 (c. 8).

10. A disclosure for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the statutory provisions relating to companies or insolvency.

11. A disclosure for the purpose of enabling or assisting the Bank of England to exercise its functions.

12. A disclosure for the purpose of enabling or assisting the Commissioners of Her Majesty's Revenue and Customs to exercise their functions.

13. A disclosure for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—

- (a) the legislation relating to friendly societies or to industrial and provident societies;
- (b) the Building Societies Act 1986 (c. 53);
- (c) Part V of the [Companies \(No. 2\) \(Northern Ireland\) Order 1990 \(NI 10\)](#);
- (d) the Financial Services and Markets Act 2000 (c. 8).

14. A disclosure in pursuance of any Community obligation.

### PART III

#### OVERSEAS REGULATORY BODIES

15. A disclosure is made in accordance with this Part if—

- (a) it is made to a body within paragraph 16, and
- (b) it is made for the purpose of enabling or assisting that body to exercise the functions mentioned in that paragraph.

16. A body is within this paragraph if it exercises functions of a public nature under legislation in any country or territory outside the United Kingdom which appear to the authorised person to be similar to his functions under Article 253B.

17. In determining whether to disclose information to a body in accordance with this Part, the authorised person must have regard to the following considerations—

- (a) whether the use which the body is likely to make of the information is sufficiently important to justify making the disclosure; and
- (b) whether the body has adequate arrangements to prevent the information from being used or further disclosed other than for the purposes of carrying out the functions mentioned in paragraph 16 or any other purposes substantially similar to those for which information disclosed to the authorised person could be used or further disclosed.”.

#### SCHEDULE 2

Article 24

#### MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART II

### PART I

#### AMENDMENTS RELATING TO AUDITORS

##### *Companies (Northern Ireland) Order 1990 (NI 5)*

1. The 1990 Order has effect subject to the following amendments.

2. In Article 33(5), for “Parts I and II” substitute “Parts I, II and III”.
3. In Articles 42(1)(a) and 49(3)(c), for “established” substitute “designated”.

## PART II

### AMENDMENTS RELATING TO ACCOUNTS AND REPORTS

#### *Companies (Northern Ireland) Order 1986 (NI 6)*

4. The 1986 Order has effect subject to the following amendments.
5. In Article 257E(2)(d) (rights to information)—
  - (a) for “Article 397A(1) and (2)” substitute “Articles 397A(1) and 397B(1) and (5)”; and
  - (b) for “the auditors” substitute “an auditor”.
6. In Article 680(1) and (2)(a) (prosecution by public authorities), after “253E,” insert “253G,”.
7. In Article 680A(1) (offences by body corporate), after “253E(3)” insert “, 253G(7)”.
8. In Article 680B(1) (criminal proceedings against unincorporated bodies)—
  - (a) after “253E(3),” insert “253G(7),”; and
  - (b) omit “397A(3),”.
- 9.—(1) Schedule 23 (punishment of offences) is amended as follows.  
 (2) After the entry relating to Article 242(5) insert—

“242ZA(6)	Making a statement in a directors' report as mentioned in Article 242ZA(2) which is false.	<ol style="list-style-type: none"> <li>1. On indictment.</li> <li>2. Summary.</li> </ol>	2 years or a fine; or both.  6 months or the statutory maximum; or both.”.
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- (3) After the entry relating to Article 253E(3) insert—

“253G(7)	Disclosing information in contravention of Article 253G(2) or (3).	<ol style="list-style-type: none"> <li>1. On indictment.</li> <li>2. Summary.</li> </ol>	2 years or a fine; or both.  3 months or the statutory maximum; or both.”.
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- (4) For the entries relating to Articles 397A(2), 397A(3) and 397A(4) substitute—

“397B(1)	Person making false, misleading or deceptive statement to auditor.	<ol style="list-style-type: none"> <li>1. On indictment.</li> <li>2. Summary.</li> </ol>	2 years or a fine; or both.  6 months or the statutory maximum; or both.
397B(2)	Failure to provide information or explanations to auditor.	Summary.	Level 3 on the standard scale.
397B(4)	Parent company failing to obtain from subsidiary	Summary.	Level 3 on the standard scale.”.

undertaking information  
for purposes of audit.

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### PART III

#### AMENDMENTS RELATING TO INVESTIGATIONS

##### *Companies (Northern Ireland) Order 1986 (NI 6)*

10. The 1986 Order has effect subject to the following amendments.

11. After Article 440 (Department's power to require production of documents) insert—

**“Information provided: evidence**

**440A.**—(1) A statement made by a person in compliance with a requirement under Article 440 may be used in evidence against him.

(2) But in criminal proceedings in which the person is charged with a relevant offence—

(a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and

(b) no question relating to it may be asked by or on behalf of the prosecution,

unless evidence relating to it is adduced or a question relating to it is asked in the proceedings by or on behalf of that person.

(3) A relevant offence is any offence other than the following—

(a) an offence under Article 444, or

(b) an offence under Article 10 of the [Perjury \(Northern Ireland\) Order 1979 \(NI 19\)](#) (false statement made otherwise than on oath).”.

12. For Article 442 (provision for security of information obtained) substitute—

**“Provision for security of information obtained**

**442.**—(1) This Article applies to information (in whatever form) obtained—

(a) in pursuance of a requirement imposed under Article 440;

(b) by means of a relevant disclosure within the meaning of Article 441A(2);

(c) by an investigator in consequence of the exercise of his powers under Article 446A.

(2) Such information must not be disclosed unless the disclosure—

(a) is made to a person specified in Schedule 15C, or

(b) is of a description specified in Schedule 15D.

(3) The Department may by order amend Schedules 15C and 15D.

(4) An order under paragraph (3) must not—

(a) amend Schedule 15C by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);

(b) amend Schedule 15D 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.

- (5) An order under paragraph (3) shall be subject to negative resolution.
- (6) 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 to both.
- (7) Articles 680, 680A and 680B apply to the offence under paragraph (6).
- (8) Any information which may by virtue of this Article be disclosed to a person specified in Schedule 15C may be disclosed to any officer or employee of the person.
- (9) This Article does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (10) For the purposes of this Article, information obtained by an investigator in consequence of the exercise of his powers under Article 446A includes information obtained by a person accompanying the investigator in pursuance of paragraph (4) of that Article in consequence of that person's accompanying the investigator.
- (11) Nothing in this Article authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29)."

13. For Article 444 (punishment for furnishing false information) substitute—

**“Punishment for furnishing false information**

- 444.**—(1) A person commits an offence if in purported compliance with a requirement under Article 440 to provide information—
- (a) he provides information which he knows to be false in a material particular;
  - (b) he recklessly provides information which is false in a material particular.
- (2) A person guilty of an offence under this Article is liable on conviction to imprisonment or a fine or to both.
- (3) Articles 680, 680A and 680B apply to an offence under this Article.”

14.—(1) Article 444A (disclosure of information by Department or inspector) is amended as follows.

- (2) For paragraph (1) substitute—

“(1) This Article applies to information obtained—

  - (a) under Articles 427 to 439;
  - (b) by an inspector in consequence of the exercise of his powers under Article 446A.”.
- (3) After paragraph (5) insert—

“(6) For the purposes of this Article, information obtained by an inspector in consequence of the exercise of his powers under Article 446A includes information obtained by a person accompanying the inspector in pursuance of paragraph (4) of that Article in consequence of that person's accompanying the inspector.

(7) The reference to an inspector in paragraph (2)(b) above includes a reference to a person accompanying an inspector in pursuance of Article 446A(4).”.

15. In Article 445 (privileged information)—

- (a) for paragraph (1) substitute—

“(1) Nothing in Articles 424 to 439 compels the disclosure by any person to the Department or to an inspector appointed by it of information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.”

- (b) for paragraphs (2) and (3) substitute—
- “(2) Nothing in Articles 440 to 444—
- (a) compels the production by any person of a document or the disclosure by any person of information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained;
- (b) authorises the taking of possession of any such document which is in the person’s possession.
- (3) The Department must not under Article 440 require, or authorise a person to require—
- (a) the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his, or
- (b) the disclosure by him of information relating to those affairs,
- unless one of the conditions in paragraph (4) is met.
- (4) The conditions are—
- (a) the Department thinks it is necessary to do so for the purpose of investigating the affairs of the person carrying on the business of banking;
- (b) the customer is a person on whom a requirement has been imposed under Article 440;
- (c) the customer is a person on whom a requirement to produce information or documents has been imposed by an investigator appointed by the Secretary of State in pursuance of section 171 or 173 of the Financial Services and Markets Act 2000 (c. 8) (powers of persons appointed under section 167 or as a result of section 168(2) to conduct an investigation).
- (5) Despite paragraphs (1) and (2) a person who is a lawyer may be compelled to disclose the name and address of his client.”.
- 16.** In Article 680 (prosecution by public authorities)—
- (a) in paragraph (1), for “440 to 444” substitute “441, 442 to 444, 446A”;
- (b) in paragraph (2)(b), for “440 to 444” substitute “441, 442 to 444 and 446A”.
- 17.** In Article 680A (offences by bodies corporate)—
- (a) in paragraph (1), for “or 440 to 444” substitute “,441, 442 to 444 or 446A”;
- (b) in paragraph (4), for “440 to 444” substitute “441, 442 to 444, 446A”.
- 18.** In Article 680B(1) (criminal proceedings against unincorporated bodies), for “440 to 444” substitute “441, 442 to 444 or Article 446A”.
- 19.** After Schedule 15B insert—

“SCHEDULE 15C

SPECIFIED PERSONS

1. The Secretary of State.
2. The Department.
3. The Treasury.
4. The Lord Advocate.
5. The Director of Public Prosecutions.

6. The Director of Public Prosecutions for Northern Ireland.
7. The Financial Services Authority.
8. A constable.
9. A procurator fiscal.
10. The Scottish Ministers.

## SCHEDULE 15D

### DISCLOSURES

1. A disclosure for the purpose of enabling or assisting a person authorised under Article 253C to exercise his functions.
2. A disclosure for the purpose of enabling or assisting an inspector appointed under Part XV to exercise his functions.
3. A disclosure for the purpose of enabling or assisting a person authorised under Article 440 of this Order or section 84 of the Companies Act 1989 (c. 40) to exercise his functions.
4. A disclosure for the purpose of enabling or assisting a person appointed under section 167 of the Financial Services and Markets Act 2000 (c. 8) (general investigations) to conduct an investigation to exercise his functions.
5. A disclosure for the purpose of enabling or assisting a person appointed under section 168 of the Financial Services and Markets Act 2000 (c. 8) (investigations in particular cases) to conduct an investigation to exercise his functions.
6. A disclosure for the purpose of enabling or assisting a person appointed under section 169(1)(b) of the Financial Services and Markets Act 2000 (c. 8) (investigation in support of overseas regulator) to conduct an investigation to exercise his functions.
7. A disclosure for the purpose of enabling or assisting a person appointed under section 284 of the Financial Services and Markets Act 2000 (c. 8) (investigations into affairs of certain collective investment schemes) to conduct an investigation to exercise his functions.
8. A disclosure for the purpose of enabling or assisting a person appointed under regulations made under sections 1(1) and (2)(k) of the Open-Ended Investment Companies Act (Northern Ireland) 2002 (c. 13) (investigations into open-ended investment companies) to conduct an investigation to exercise his functions.
9. A disclosure for the purpose of enabling or assisting the Department, the Secretary of State or the Treasury to exercise any of their functions under any of the following—
  - (a) this Order;
  - (b) the insider dealing legislation;
  - (c) the *Insolvency (Northern Ireland) Order 1989 (NI 19)*;
  - (d) the *Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4)*;
  - (e) Part 7 of the Companies Act 1989 (c. 40);
  - (f) Part III of the 1990 Order;
  - (g) Part II or V of the *Companies (No. 2) (Northern Ireland) Order 1990 (NI 10)*;
  - (h) the Financial Services and Markets Act 2000 (c. 8).

**10.** A disclosure for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the statutory provisions relating to companies or insolvency.

**11.** A disclosure for the purpose of enabling or assisting a person appointed or authorised by the Secretary of State under the statutory provisions relating to companies or insolvency to exercise his functions.

**12.** A disclosure for the purpose of enabling or assisting the Pensions Regulator to exercise his functions under any of the following—

- (a) the Pension Schemes (Northern Ireland) Act 1993 (c. 49);
- (b) the Pensions (Northern Ireland) Order 1995 (NI 22);
- (c) the Pensions (Northern Ireland) Order 2005 (NI 1);
- (d) any statutory provision in force in Great Britain corresponding to any of the above.

**13.** A disclosure for the purpose of enabling or assisting the Bank of England to exercise its functions.

**14.** A disclosure for the purpose of enabling or assisting the body known as the Panel on Takeovers and Mergers to exercise its functions.

**15.** A disclosure for the purpose of enabling or assisting organs of the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982) to exercise their functions under or by virtue of the Lloyd's Acts 1871 to 1982.

**16.** A disclosure for the purpose of enabling or assisting the Office of Fair Trading to exercise its functions under any of the following—

- (a) the Fair Trading Act 1973 (c. 41);
- (b) the Consumer Credit Act 1974 (c. 39);
- (c) the Estate Agents Act 1979 (c. 38);
- (d) the Competition Act 1980 (c. 21);
- (e) the Competition Act 1998 (c. 41);
- (f) the Financial Services and Markets Act 2000 (c. 8);
- (g) the Enterprise Act 2002 (c. 40);
- (h) the Control of Misleading Advertisements Regulations 1988 (S.I.1988/915);
- (i) the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083).

**17.** A disclosure for the purpose of enabling or assisting the Competition Commission to exercise its functions under any of the following—

- (a) the Fair Trading Act 1973 (c. 41);
- (b) the Competition Act 1980 (c. 21);
- (c) the Competition Act 1998 (c. 41);
- (d) the Enterprise Act 2002 (c. 40).

**18.** A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Competition Appeal Tribunal.

**19.** A disclosure for the purpose of enabling or assisting an enforcer under Part 8 of the Enterprise Act 2002 (c. 40) to exercise its functions under that Part.

**20.** A disclosure for the purpose of enabling or assisting the Attorney General for Northern Ireland to exercise his functions in connection with charities.



**21.** A disclosure for the purpose of enabling or assisting the National Lottery Commission to exercise its functions under sections 5 to 10 and 15 of the National Lottery etc. Act 1993 (c. 39).

**22.** A disclosure by the National Lottery Commission to the National Audit Office for the purpose of enabling or assisting the Comptroller and Auditor General to carry out an examination under Part 2 of the National Audit Act 1983 (c. 44) into the economy, effectiveness and efficiency with which the National Lottery Commission has used its resources in discharging its functions under sections 5 to 10 of the National Lottery etc. Act 1993 (c. 39).

**23.** A disclosure for the purpose of enabling or assisting a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083) to exercise its functions under those Regulations.

**24.** A disclosure for the purpose of enabling or assisting an enforcement authority under the Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334) to exercise its functions under those Regulations.

**25.** A disclosure for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—

- (a) the legislation relating to friendly societies or to industrial and provident societies;
- (b) the Building Societies Act 1986 (c. 53);
- (c) Part 7 of the Companies Act 1989 (c. 40);
- (d) the Financial Services and Markets Act 2000 (c. 8).

**26.** A disclosure for the purpose of enabling or assisting the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 (c. 8) to exercise its functions under that Part.

**27.** A disclosure for the purpose of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (c. 8) (compensation scheme manager) to exercise its functions.

**28.—(1)** A disclosure for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to exercise its functions as such.

(2) Recognised investment exchange and recognised clearing house have the same meaning as in section 285 of the Financial Services and Markets Act 2000 (c. 8).

**29.** A disclosure for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (c. 8) (designated professional bodies) to exercise its functions in its capacity as a body designated under that section.

**30.** A disclosure with a view to the institution of, or otherwise for the purposes of, civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000 (c. 8).

**31.** A disclosure for the purpose of enabling or assisting a body designated by order under Article 48 of the 1990 Order (delegation of functions of Department) to exercise its functions under Part III of that Order.

**32.** A disclosure for the purpose of enabling or assisting a recognised supervisory or qualifying body (within the meaning of Part II of the 1990 Order) to exercise its functions as such.

**33.** A disclosure for the purpose of enabling or assisting an official receiver (or, as the case may be, the Accountant in Bankruptcy in Scotland) to exercise his functions under the statutory provisions relating to insolvency.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 No. 1967*

**34.** A disclosure for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 (recognised professional bodies) to exercise its functions as such.

**35.—(1)** A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.

(2) Overseas regulatory authority and regulatory functions have the same meaning as in section 82 of the Companies Act 1989 (c. 40).

**36.** A disclosure for the purpose of enabling or assisting the Regulator of Community Interest Companies for Northern Ireland to exercise functions under the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.

**37.** A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.

**38.** A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under Article 9, 10 or 11 of the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#).

**39.** A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal.

**40.** A disclosure for the purposes of proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001 (S.I. [2001/3592](#)).

**41.** A disclosure for the purpose of enabling or assisting a body appointed under section 14 of the Companies (Audit, Investigations and Community Enterprise) Act [2004 \(c. 27\)](#) (supervision of periodic accounts and reports of issuers of listed securities) to exercise functions mentioned in subsection (2) of that section.

**42.** A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a solicitor, barrister, auditor, accountant, valuer or actuary of his professional duties.

**43.—(1)** A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a public servant of his duties.

(2) Public servant means an officer or employee of the Crown or of any public or other authority for the time being designated for the purposes of this paragraph by the Department by order.

(3) An order under sub-paragraph (2) shall be subject to negative resolution.

**44.** A disclosure for the purpose of the provision of a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained.

**45.** A disclosure in pursuance of any Community obligation.”.

**20.—(1)** Schedule 23 (punishment of offences) is amended as follows.

(2) For the entry for Article 442(2) substitute—

“442(6)	Wrongful disclosure of information to which Article 442 applies.	<b>1.</b> On indictment.  <b>2.</b> Summary.	2 years or a fine; or both.
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6 months or the statutory maximum; or both.”.

(3) For the entry for Article 444 substitute—

“444	Providing false information in purported compliance with Article 440.	<p><b>1.</b> On indictment.</p> <p><b>2.</b> Summary.</p>	<p>2 years or a fine; or both.</p> <p>6 months or the statutory maximum; or both.”.</p>
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(4) After the entry for Article 444 insert—

“446A(5)	Intentionally obstructing a person lawfully acting under Article 446A(2) or (4).	<p><b>1.</b> On indictment.</p> <p><b>2.</b> Summary.</p>	<p>A fine.</p> <p>The statutory maximum.”.</p>
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*Insolvency (Northern Ireland) Order 1989 (NI 19)*

**21.** In Article 104A(1)(a) of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (petition for winding up on grounds of public interest), after “Part XV” insert “(except Article 441A)”.

*Companies Act 1989 (c. 40)*

**22.** In the table in section 87(4) of the [Companies Act 1989 \(c. 40\)](#) (exceptions from restrictions on disclosure), after the entry relating to the Regulator of Community Interest Companies insert—

“The Regulator of Community Interest Companies for Northern Ireland.	Functions under the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.”.
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*Criminal Justice and Police Act 2001 (c. 16)*

**23.** In paragraph 17 of Schedule 2 to the [Criminal Justice and Police Act 2001 \(c. 16\)](#) (amendments of Articles 427 and 440 of the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#)), for “Articles 427(6) and 440(9)” substitute “Article 427(6)”.

*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

**24.** In paragraph 59 of Schedule 4 to the [Anti-terrorism, Crime and Security Act 2001 \(c. 24\)](#) (enactments to which section 17 of that Act applies), for “442(1)” substitute “442”.

*Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4)*

**25.** In Article 11(2)(b)(i) of the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#) (disqualification after investigation of a company), for “or 441” substitute “, 441 or 446A”.

## SCHEDULE 3

Article 24

## REPEALS

Short Title	Extent of repeal
<a href="#">The Companies (Northern Ireland) Order 1986 (NI 6).</a>	<p>Article 253C(6).</p> <p>Article 264(3).</p> <p>In Article 318(1), the words “any officer of the company or”.</p> <p>In Article 318(3) the words “officer or” (in both places) and the words from “Article 154(3)” to “nominee) or”.</p> <p>Article 398A(3).</p> <p>In Article 680B(1), the words “Article 397A(3),”.</p> <p>In Schedule 4A, in paragraph 1(1), the words “Article 398A(3) (amount of auditors' remuneration) and”.</p> <p>In Schedule 23, the entry relating to Article 440(6).</p>
<a href="#">The Companies (Northern Ireland) Order 1989 (NI 18).</a>	In Schedule 4, paragraph 4.
<a href="#">The Companies (Northern Ireland) Order 1990 (NI 5).</a>	Article 50(3).
<a href="#">The Companies (No. 2) (Northern Ireland) Order 1990 (NI 10).</a>	<p>Article 11.</p> <p>Article 13.</p> <p>Article 15.</p> <p>Article 17(2) and (4).</p> <p>Article 55(2).</p>
<a href="#">The Friendly Societies Act 1992 (c. 40).</a>	In Schedule 21, paragraph 30.
<a href="#">The Criminal Justice Act 1993 (c. 36).</a>	In Schedule 5, paragraph 19(1) and (2).
<a href="#">The Pensions (Northern Ireland) Order 1995 (NI 22).</a>	In Schedule 1, paragraph 10.
<a href="#">The Bank of England Act 1998 (c. 11).</a>	In Schedule 5, paragraph 63.
<a href="#">The Youth Justice and Criminal Evidence Act 1999 (c. 23).</a>	In Schedule 3, paragraph 15.

Short Title	Extent of repeal
<a href="#">The Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4).</a>	In Schedule 3, paragraph 5.

## SCHEDULE 4

Article 26

### REGULATOR OF COMMUNITY INTEREST COMPANIES FOR NORTHERN IRELAND

#### *Regulator's terms of appointment*

- 1.—(1) The period for which a person is appointed as Regulator must not exceed five years.
- (2) A person who has held office as Regulator may be re-appointed, once only, for a further period not exceeding five years.
- (3) The Regulator may at any time resign the office by giving notice in writing to the Department.
- (4) The Department may at any time remove the Regulator on the ground of incapacity or misbehaviour.
- (5) Subject to that, the Regulator holds and vacates office on the terms determined by the Department.

#### *Remuneration and pensions*

- 2.—(1) The Department may pay remuneration and travelling and other allowances to the Regulator.
- (2) The Department may—
  - (a) pay a pension, allowance or gratuity to or in respect of a person who is or has been the Regulator, or
  - (b) make contributions or payments towards provision for a pension, allowance or gratuity for or in respect of such a person.

#### *Staff*

- 3.—(1) The Regulator may, after consulting the Department of Finance and Personnel as to numbers and terms and conditions of service, appoint such staff as the Regulator may determine.
- (2) The members of staff must include a deputy to the Regulator who is to act as Regulator—
  - (a) during any vacancy in that office, or
  - (b) if the Regulator is absent, subject to suspension or unable to act.
- (3) Where a participant in a scheme under Article 3 of the [Superannuation \(Northern Ireland\) Order 1972 \(NI 10\)](#) is appointed as the Regulator, the Department of Finance and Personnel may determine that the person's term of office as the Regulator is to be treated for the purposes of the scheme as service in the employment by reference to which he was a participant (whether or not any benefits are payable by virtue of paragraph 2(2)).

#### *Delegation of functions*

4. Anything which the Regulator is authorised or required to do may be done by a member of the Regulator's staff if authorised by the Regulator (generally or specifically) for that purpose.

#### *Finance*

5. The Department may make payments to the Regulator.

#### *Reports and other information*

6.—(1) The Regulator must, in respect of each financial year, prepare a report on the exercise of the Regulator's functions during the financial year.

(2) The Regulator must prepare accounts in respect of a financial year if the Department so directs.

(3) The Regulator must send a copy of the accounts to the Comptroller and Auditor General.

(4) The Comptroller and Auditor General must examine, certify and report on the accounts and send a copy of the report to the Regulator.

(5) The Regulator must include the accounts and the Comptroller and Auditor General's report on them in the report prepared by the Regulator in respect of the financial year to which the accounts relate.

(6) The Regulator must prepare that report as soon as possible after the end of the financial year to which it relates.

(7) The Regulator must send to the Department a copy of—

(a) each report prepared by the Regulator under sub-paragraph (1), and

(b) each report prepared by the Official Property Holder under paragraph 6 of Schedule 6.

(8) The Department must lay before the Assembly a copy of each of those reports.

(9) The Regulator must supply the Department with such other reports and information relating to the exercise of the Regulator's functions as the Department may require.

(10) In this paragraph—

“the Comptroller and Auditor General” means the Comptroller and Auditor General for Northern Ireland;

“financial year” means—

(a) the period beginning with the date on which a person is first appointed as the Regulator and ending with the next 31st March, and

(b) each successive period of 12 months beginning with 1st April.

#### *Amendments*

7. In Schedule 2 to the [Commissioner for Complaints \(Northern Ireland\) Order 1996 \(NI 7\)](#) (bodies subject to investigation), insert at the appropriate place—

“Office of the Regulator of Community Interest Companies for Northern Ireland.”.

8. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act [1975 \(c. 25\)](#) (disqualifying offices), insert at the appropriate place—

“Regulator of Community Interest Companies for Northern Ireland.”.

## SCHEDULE 5

Article 27

### APPEAL OFFICER FOR COMMUNITY INTEREST COMPANIES FOR NORTHERN IRELAND

#### *Appeal Officer's terms of appointment*

1.—(1) The Appeal Officer holds office for the period determined by the Department on appointment (or re-appointment).

(2) But—

- (a) the Appeal Officer may at any time resign the office by giving notice in writing to the Department, and
- (b) the Department may at any time remove the Appeal Officer on the ground of incapacity or misbehaviour.

(3) Subject to that, the Appeal Officer holds and vacates office on the terms determined by the Department.

#### *Remuneration and pensions*

2.—(1) The Department may pay remuneration and travelling and other allowances to the Appeal Officer.

(2) The Department may—

- (a) pay a pension, allowance or gratuity to or in respect of a person who is or has been the Appeal Officer, or
- (b) make contributions or payments towards provision for a pension, allowance or gratuity for or in respect of such a person.

#### *Finance*

3. The Department may make payments to the Appeal Officer.

#### *Procedure*

4.—(1) Regulations may make provision about the practice and procedure to be followed by the Appeal Officer.

(2) Regulations under this paragraph may in particular impose time limits for bringing appeals.

#### *Amendments*

5. In Schedule 2 to the [Commissioner for Complaints \(Northern Ireland\) Order 1996 \(NI 7\)](#) (bodies subject to investigation), insert at the appropriate place—

“Appeal Officer for Community Interest Companies for Northern Ireland.”.

6. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act [1975 \(c. 25\)](#) (disqualifying offices), insert at the appropriate place—

“Appeal Officer for Community Interest Companies for Northern Ireland.”.

SCHEDULE 6

Article 28

OFFICIAL PROPERTY HOLDER FOR COMMUNITY  
INTEREST COMPANIES FOR NORTHERN IRELAND

*Status*

- 1.—(1) The Official Property Holder is a corporation sole.
- (2) A document purporting to be—
- (a) duly executed under the seal of the Official Property Holder, or
  - (b) signed on behalf of the Official Property Holder,
- shall be received in evidence and shall, unless the contrary is proved, be taken to be so executed or signed.

*Relationship with Regulator*

2. The Regulator must make available to the Official Property Holder such members of the Regulator's staff as the Official Property Holder may require in order to exercise the functions of the office.

*Effect of vacancy*

3. The Regulator must appoint a member of the Regulator's staff who is to act as Official Property Holder—
- (a) during any vacancy in the office, or
  - (b) if the Official Property Holder is absent, subject to suspension or unable to act.

*Property*

- 4.—(1) The Official Property Holder holds property vested in or transferred to him as a trustee.
- (2) The Official Property Holder may release or deal with the property—
- (a) to give effect to any interest in or right over the property of any person (other than the community interest company by which, or in trust for which, the property was held before it was vested or transferred), or
  - (b) at the request of a person appointed to act as administrative receiver, administrator, provisional liquidator or liquidator of the company.
- (3) Subject to sub-paragraph (2), the Official Property Holder may not release or deal with the property except in accordance with directions given by the Regulator.

*Finance*

- 5.—(1) The Official Property Holder may recover his expenses in respect of property held by him from the property or from the community interest company by which, or in trust for which, the property was held before it was vested in or transferred to the Official Property Holder.
- (2) Any expenses of the Official Property Holder not recovered under sub-paragraph (1) are to be met by the Regulator.



### Reports

- 6.—(1) As soon as possible after the end of each financial year, the Official Property Holder must prepare a report on the exercise of the Official Property Holder’s functions during the financial year.
- (2) The Official Property Holder must send a copy of the report to the Regulator.
- (3) In this paragraph “financial year” means—
- (a) the period beginning with the date on which a person is first appointed as the Official Property Holder and ending with the next 31st March, and
  - (b) each successive period of 12 months beginning with 1st April.

## SCHEDULE 7

Article 32

### COMMUNITY INTEREST COMPANIES: NAMES

#### *Companies (Northern Ireland) Order 1986 (NI 6)*

- 1.—(1) Article 36 (prohibition on registration of certain names) is amended as follows.
- (2) In paragraph (1)(a) for “or “public limited company”” substitute “, “public limited company”, “community interest company” or “community interest public limited company””.
- (3) In paragraph (3)(b), for “and “public limited company” substitute “, “public limited company”, “community interest company”, “community interest public limited company”,”.
2. In Article 37(4) (alternatives of statutory designations), after sub-paragraph (b) add
- “and
- (c) the alternative of “community interest company” is “c.i.c.”; and
  - (d) the alternative of “community interest public limited company” is “community interest p.l.c.”.”.
3. In Article 40(7) (further exemptions for company exempt from using “limited” as part of its name), after “which” insert “under this Article”.
4. After Article 44 insert—

#### **“Penalty for improper use of “community interest company”**

**44A.**—(1) A company which is not a community interest company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of the expressions specified in paragraph (3).

(2) A person other than a company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of those expressions (or any contraction of them) as its last part.

- (3) The expressions are—
- (a) “community interest company”, and
  - (b) “community interest public limited company”.
- (4) Paragraphs (1) and (2) do not apply—

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 No. 1967*

- (a) to a person who was carrying on a trade, profession or business under the name in question at any time during the period beginning with 1st January 2005 and ending with 15th March 2005, or
- (b) if the name in question was on 15th March 2005 a registered trade mark or Community trade mark (within the meaning of the Trade Marks Act 1994 (c. 26)), to a person who was on that date a proprietor or licensee of that trade mark.

(5) A person guilty of an offence under paragraph (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.”.

5. In Article 53(2)(b) (re-registration of private company as public: alteration of name), after “Article 35(1)” insert “, or Article 32 of the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005,”.

6. In Article 359(1)(d) (particulars in correspondence to indicate that a company exempt from obligation to use “limited” as part of name is limited company), after “name” insert “under Article 40 or a community interest company which is not a public company”.

7.—(1) Schedule 23 (punishment of offences) is amended as follows.

(2) After the entry relating to Article 44 insert—

“44A.	Trading with improper use of “community interest company” etc.	Summary.	Level 3.	One-tenth of level 3 on the standard scale.”.
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*Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12)*

8. In paragraph 8(2) of the Schedule (similarity of names), after the entry relating to “public limited company” insert—

- ““community interest company”,
- “community interest public limited company”.”.

SCHEDULE 8

Article 40

COMMUNITY INTEREST COMPANIES: INVESTIGATIONS

*Power to require documents and information*

1.—(1) The investigator of a community interest company may 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.

(2) A person on whom a requirement is imposed under sub-paragraph (1) may require the investigator to produce evidence of his authority.

(3) A requirement under sub-paragraph (1) must be complied with at such time and place as may be specified by the investigator.

(4) The production of a document in pursuance of this paragraph does not affect any lien which a person has on the document.

(5) The investigator may take copies of or extracts from a document produced in pursuance of this paragraph.

(6) 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.

(7) In this Schedule—

(a) “the investigator of a community interest company” means a person investigating the company’s affairs under Article 40, and

(b) “document” includes information recorded in any form.

#### *Privileged information*

2.—(1) Nothing in paragraph 1 requires a person to produce a document or provide information in respect of which a claim could be maintained in an action in the High Court to legal professional privilege, but a person who is a lawyer may be required to provide the name and address of his client.

(2) Nothing in paragraph 1 requires a person carrying on the business of banking to produce a document, or provide information, relating to the affairs of a customer unless a requirement to produce the document, or provide the information, has been imposed on the customer under that paragraph.

#### *Use of information as evidence*

3.—(1) A statement made by a person in compliance with a requirement imposed under paragraph 1 may be used in evidence against the person.

(2) But in criminal proceedings—

(a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and

(b) no question relating to it may be asked by or on behalf of the prosecution,

unless evidence relating to it is adduced or a question relating to it is asked in the proceedings by or on behalf of that person.

(3) However, sub-paragraph (2) does not apply to proceedings in which a person is charged with an offence under—

(a) paragraph 5,

(b) Article 10 of the [Perjury \(Northern Ireland\) Order 1979 \(NI 19\)](#) (false statement made otherwise than on oath).

#### *Failure to comply with requirement*

4.—(1) This paragraph applies if a person fails to comply with a requirement imposed under paragraph 1.

(2) The investigator may certify that fact in writing to the court.

(3) If, after hearing—

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*The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 No. 1967*

(a) any witnesses who may be produced against or on behalf of the alleged offender, and  
(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.

*False information*

5.—(1) A person commits an offence if in purported compliance with a requirement under paragraph 1 to provide information, the person—

- (a) provides information which the person knows to be false in a material particular, or
- (b) recklessly provides information which is false in a material particular,

but a prosecution may be instituted only with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) A person guilty of an offence under sub-paragraph (1) is liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine of an amount not exceeding the statutory maximum or to both.