



Companies Act 1989

1989 CHAPTER 40

PART II

ELIGIBILITY FOR APPOINTMENT AS COMPANY AUDITOR

Offences

41 False and misleading statements.

- (1) A person commits an offence if—
 - (a) for the purposes of or in connection with any application under this Part, or
 - (b) in purported compliance with any requirement imposed on him by or under this Part,he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.
- (2) It is an offence for a person whose name does not appear on the register of auditors kept under regulations under section 35 to describe himself as a registered auditor or so to hold himself out as to indicate, or be reasonably understood to indicate, that he is a registered auditor.
- (3) It is an offence for a body which is not a recognised supervisory or qualifying body to describe itself as so recognised or so to describe itself or hold itself out as to indicate, or be reasonably understood to indicate, that it is so recognised.
- (4) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.

Status: Point in time view as at 10/03/1994.

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- (5) A person guilty of an offence under subsection (2) or (3) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both.

Where a contravention of subsection (2) or (3) involves a public display of the offending description, the maximum fine that may be imposed is (in place of that mentioned above) an amount equal to level 5 on the standard scale multiplied by the number of days for which the display has continued.

- (6) It is a defence for a person charged with an offence under subsection (2) or (3) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Commencement Information

- II** [S. 41](#) wholly in force; [s. 41](#) in force for certain purposes at 1.3.1990 see [S.I. 1990/142](#) and wholly in force at 1.10.1991 see [s. 215](#) and [S.I. 1991/1996](#), [art. 2\(1\)\(a\)](#)

42 Offences by bodies corporate, partnerships and unincorporated associations.

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.
- (3) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where an offence under this Part committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

43 Time limits for prosecution of offences.

- (1) An information relating to an offence under this Part which is triable by a magistrates' court in England and Wales may be so tried on an information laid at any time within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State to justify the proceedings comes to his knowledge.
- (2) Proceedings in Scotland for an offence under this Part may be commenced at any time within twelve months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge or, where such

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evidence was reported to him by the Secretary of State, within twelve months after the date on which it came to the knowledge of the latter.

For the purposes of this subsection proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if the warrant is executed without undue delay.

- (3) Subsection (1) does not authorise the trial of an information laid, and subsection (2) does not authorise the commencement of proceedings, more than three years after the commission of the offence.
- (4) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate or the Secretary of State as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.
- (5) Nothing in this section affects proceedings within the time limits prescribed by section 127(1) of the ^{M1}Magistrates' Courts Act 1980 or section 331 of the ^{M2}Criminal Procedure (Scotland) Act 1975 (the usual time limits for criminal proceedings).

Modifications etc. (not altering text)

- C1** S. 43(1) modified (5.9.2005) by [The Companies Act 1989 \(Delegation\) Order 2005 \(S.I. 2005/2337\)](#), [art. 10](#)
- C2** S. 43(2) modified (5.9.2005) by [The Companies Act 1989 \(Delegation\) Order 2005 \(S.I. 2005/2337\)](#), [art. 10](#)
- C3** S. 43(4) modified (5.9.2005) by [The Companies Act 1989 \(Delegation\) Order 2005 \(S.I. 2005/2337\)](#), [art. 10](#)

Marginal Citations

- M1** 1980 c. 43.
- M2** 1975 c. 21.

44 Jurisdiction and procedure in respect of offences.

- (1) Summary proceedings for an offence under this Part may, without prejudice to any jurisdiction exercisable apart from this section, be taken against a body corporate or unincorporated association at any place at which it has a place of business and against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under this Part by an unincorporated association shall be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate.
- (3) Section 33 of the ^{M3}Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in England and Wales with an offence under this Part as they apply in the case of a corporation.
- (4) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under this Part by an unincorporated association, section 74 of the Criminal Procedure (Scotland) Act 1975 (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.

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- (5) A fine imposed on an unincorporated association on its conviction of such an offence shall be paid out of the funds of the association.

Marginal Citations

M3 [1925 c. 86.](#)

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