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## SCHEDULES

### SCHEDULE 1

Section 41

#### THE PUBS CODE ADJUDICATOR

#### PART 1

#### THE PUBS CODE ADJUDICATOR

##### *Status*

1 The Adjudicator is a corporation sole.

##### **Commencement Information**

**I1** Sch. 1 para. 1 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

2 The Adjudicator carries out functions on behalf of the Crown.

##### **Commencement Information**

**I2** Sch. 1 para. 2 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

##### *Appointment*

3 The Adjudicator is to be appointed by the Secretary of State.

##### **Commencement Information**

**I3** Sch. 1 para. 3 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

##### *Deputy Adjudicator*

4 The Secretary of State may appoint a Deputy Adjudicator.

##### **Commencement Information**

**I4** Sch. 1 para. 4 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

5 The Deputy Adjudicator may carry out any of the Adjudicator's functions.

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**Commencement Information**

**I5** Sch. 1 para. 5 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

*Term of office etc*

- 6 A person holds and vacates office as the Adjudicator or Deputy Adjudicator in accordance with the terms of the appointment, but—
- (a) the initial term of office may not be more than 4 years,
  - (b) a person may be appointed for no more than 2 further terms of office,
  - (c) a further term may not be more than 3 years,
  - (d) the person may resign by giving written notice to the Secretary of State, and
  - (e) the Secretary of State may dismiss the person if satisfied that the person is unable, unwilling or unfit to perform the person's functions.

**Commencement Information**

**I6** Sch. 1 para. 6 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

- 7 Service as the Adjudicator, or as the Deputy Adjudicator, is not service in the civil service of the state.

**Commencement Information**

**I7** Sch. 1 para. 7 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

*Remuneration*

- 8 (1) The Adjudicator may pay to or in respect of the person holding office as the Adjudicator or Deputy Adjudicator—
- (a) remuneration;
  - (b) allowances;
  - (c) sums by way of or in respect of pensions.
- (2) The Secretary of State must determine rates and eligibility criteria for the payments.

**Commencement Information**

**I8** Sch. 1 para. 8 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

*Staff*

- 9 (1) The Adjudicator may make arrangements for persons to be seconded to the Adjudicator to serve as members of the Adjudicator's staff.
- (2) The arrangements may include provision for payments by the Adjudicator to the person with whom the arrangements are made, or directly to seconded staff (or both).

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- (3) A period of secondment to the Adjudicator does not affect the continuity of a person's employment with the employer from whose service he or she is seconded (and a person employed in the civil service of the State continues to be so employed during any period of secondment to the Adjudicator).
- (4) Before making arrangements under sub-paragraph (1), the Adjudicator must obtain the approval of the Secretary of State as to the Adjudicator's policies on—
  - (a) the number of staff to be seconded;
  - (b) payments to be made to or in respect of seconded staff;
  - (c) the terms and conditions on which staff are to be seconded.

**Commencement Information**

**I9** Sch. 1 para. 9 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

*Conflicts of interest*

- 10 (1) The Adjudicator must make procedural arrangements for dealing with any conflict of interest affecting—
  - (a) the Adjudicator,
  - (b) the Deputy Adjudicator, or
  - (c) staff working for the Adjudicator.
- (2) The Adjudicator must consult the Secretary of State before making or revising the arrangements.
- (3) The Adjudicator must publish a summary of the arrangements.

**Commencement Information**

**I10** Sch. 1 para. 10 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

- 11 (1) This paragraph applies if both the Adjudicator and the Deputy Adjudicator are unable to act in relation to a matter because of conflicts of interest.
- (2) The Secretary of State must appoint a person to act as a Deputy Adjudicator if asked to do so by the Adjudicator.
- (3) An acting Deputy Adjudicator may carry out any of the Adjudicator's functions for the purpose of dealing with the matter in respect of which the acting Deputy Adjudicator is appointed.
- (4) A person holds and vacates office as an acting Deputy Adjudicator in accordance with the terms of the person's appointment (subject to sub-paragraph (5)).
- (5) Paragraphs 6(d) and (e), 7 and 8 apply to an acting Deputy Adjudicator as they apply to the Deputy Adjudicator.

**Commencement Information**

**I11** Sch. 1 para. 11 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

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### *Validity of acts*

- 12 A defect in appointment does not affect the validity of things done by—
- (a) the Adjudicator,
  - (b) the Deputy Adjudicator, or
  - (c) an acting Deputy Adjudicator.

#### **Commencement Information**

**I12** Sch. 1 para. 12 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

### *Application of seal and proof of documents*

- 13 The application of the Adjudicator's seal must be authenticated by the signature of—
- (a) the Adjudicator, or
  - (b) some other person who has been authorised by the Adjudicator for that purpose (whether generally or specially).

#### **Commencement Information**

**I13** Sch. 1 para. 13 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

- 14 A document purporting to be duly executed under the seal—
- (a) is to be received in evidence, and
  - (b) is to be treated as duly executed unless the contrary is shown.

#### **Commencement Information**

**I14** Sch. 1 para. 14 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

### *Accounts*

- 15 (1) The Adjudicator must keep proper accounts and proper records in relation to the accounts.
- (2) For each financial year, the Adjudicator must prepare a statement of accounts in respect of that financial year.
- (3) The statement must be in whatever form the Secretary of State directs.
- (4) The Adjudicator must send a copy of the statement, within a period specified by the Secretary of State, to—
- (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (5) After the Adjudicator has sent a copy of a statement of accounts to the Comptroller and Auditor General, the Comptroller and Auditor General must—
- (a) examine, certify and report on the statement, and
  - (b) send a copy of the certified statement and the report to the Secretary of State as soon as possible.

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- (6) The Secretary of State must lay before Parliament a copy of the certified statement and the report.

**Commencement Information**

**I15** Sch. 1 para. 15 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

*Incidental powers*

- 16 The Adjudicator may do anything that is calculated to facilitate the carrying out of the Adjudicator's functions or is conducive or incidental to the carrying out of those functions.

**Commencement Information**

**I16** Sch. 1 para. 16 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

*Assistance from the Secretary of State*

- 17 The Secretary of State may provide staff, premises, facilities or other assistance to the Adjudicator (with or without charge).

**Commencement Information**

**I17** Sch. 1 para. 17 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

*Exemption from liability for damages*

- 18 (1) The following are exempt from liability in damages for anything done or omitted in the exercise or purported exercise of their functions—
- (a) the Adjudicator;
  - (b) the Deputy Adjudicator;
  - (c) acting Deputy Adjudicators;
  - (d) staff working for the Adjudicator.
- (2) Sub-paragraph (1) 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 made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

**Commencement Information**

**I18** Sch. 1 para. 18 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

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## PART 2

### INFORMATION POWERS OF THE PUBS CODE ADJUDICATOR

- 19 (1) The Adjudicator may, for the purposes of an investigation, require a person—
- (a) to provide documents in the person's possession or control;
  - (b) to provide other information in the person's possession or control.
- (2) The Adjudicator may, for the purposes of monitoring whether a pub-owning business has followed a recommendation made under section 56, require the business—
- (a) to provide documents in the possession or control of the business;
  - (b) to provide other information in the possession or control of the business.
- (3) The Adjudicator may, for the purposes of exercising functions in relation to the offer of a market rent only option or the provision of parallel rent assessments, require a person—
- (a) to provide documents in the person's possession or control;
  - (b) to provide other information in the person's possession or control.
- (4) A requirement imposed under this paragraph may include a requirement for information to be provided orally.
- (5) A requirement is imposed by giving written notice specifying—
- (a) to whom the information is to be provided,
  - (b) where it is to be provided,
  - (c) when, or the time by which, it is to be provided, and
  - (d) the form and manner in which it is to be provided.
- (6) A notice must also explain the possible consequences of failing to comply.
- (7) If a notice requires an individual to attend at a particular place, the Adjudicator must offer to pay necessary travelling expenses.
- (8) A person may not be required under this paragraph to do anything that the person could not be compelled to do in civil proceedings before the High Court.

#### Commencement Information

**I19** Sch. 1 para. 19 in force at 21.7.2016 by S.I. 2016/532, reg. 3

- 20 (1) It is an offence for a person intentionally to fail to comply with a requirement under this Part of this Schedule.
- (2) It is a defence for a person charged with that offence to prove that there was a reasonable excuse for the person's failure.

#### Commencement Information

**I20** Sch. 1 para. 20 in force at 21.7.2016 by S.I. 2016/532, reg. 3

- 21 It is an offence for a person knowingly to provide false information in response to a requirement under this Part of this Schedule.

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**Commencement Information**

**I21** Sch. 1 para. 21 in force at 21.7.2016 by S.I. 2016/532, reg. 3

- 22 A person guilty of an offence under this Part of this Schedule is liable—
- (a) on summary conviction, to a fine;
  - (b) on conviction on indictment, to a fine.

**Commencement Information**

**I22** Sch. 1 para. 22 in force at 21.7.2016 by S.I. 2016/532, reg. 3

### PART 3

#### AMENDMENTS OF LEGISLATION

- 23 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) at the appropriate place insert— “ Pubs Code Adjudicator. ”

**Commencement Information**

**I23** Sch. 1 para. 23 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

- 24 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) at the appropriate places insert— “ Member of staff of the Pubs Code Adjudicator. ” “ Pubs Code Adjudicator or Deputy Pubs Code Adjudicator. ”

**Commencement Information**

**I24** Sch. 1 para. 24 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

- 25 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities) at the appropriate place insert— “ Pubs Code Adjudicator. ”

**Commencement Information**

**I25** Sch. 1 para. 25 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

- 26 In each of Schedules 14 and 15 to the Enterprise Act 2002 (provisions about disclosure of information) at the appropriate place insert— “ Part 4 of the Small Business, Enterprise and Employment Act 2015. ”

**Commencement Information**

**I26** Sch. 1 para. 26 in force at 2.5.2016 by S.I. 2016/532, reg. 2(a)

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## SCHEDULE 2

Section 77

### REGISTRATION OF CHILDCARE: PREMISES

#### *Childcare Act 2006*

1 The Childcare Act 2006 is amended in accordance with paragraphs 2 to 19.

#### Commencement Information

**I27** Sch. 2 para. 1 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

2 In section 34 (requirement to register: other early years providers)—  
 (a) in subsection (1), omit “in respect of the premises”;  
 (b) in subsection (1A)(a) and (b), omit “in respect of the premises”.

#### Commencement Information

**I28** Sch. 2 para. 2 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

3 In section 36 (applications for registration: other early years providers)—  
 (a) in subsection (1), omit “on any premises” and “in respect of the premises”;  
 (b) in subsection (1A), omit “on any premises”;  
 (c) in subsection (1A)(a) and (b), omit “in respect of the premises”.

#### Commencement Information

**I29** Sch. 2 para. 3 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

4 In section 37 (entry on the register and certificates), in subsection (2)(a) omit “, in respect of the premises in question”.

#### Commencement Information

**I30** Sch. 2 para. 4 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

5 In section 37A (early years childminder agencies: registers and certificates), in subsection (2)(a) omit “, in respect of the premises in question”.

#### Commencement Information

**I31** Sch. 2 para. 5 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

6 In section 53 (requirement to register: other later years providers)—  
 (a) in subsection (1), omit “in respect of the premises”;  
 (b) in subsection (1A), in paragraphs (a) and (b) omit “in respect of the premises”.



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**Commencement Information**

**I32** Sch. 2 para. 6 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 7 In section 55 (applications for registration: other later years providers)—
- (a) in subsection (1), omit “on any premises” and “in respect of the premises”;
  - (b) in subsection (1A), omit “on any premises”;
  - (c) in subsection (1A)(a) and (b), omit “in respect of the premises”.

**Commencement Information**

**I33** Sch. 2 para. 7 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 8 In section 56 (entry on the register and certificates), in subsection (2)(a) omit “, in respect of the premises in question”.

**Commencement Information**

**I34** Sch. 2 para. 8 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 9 In section 56A (later years childminder agencies: registers and certificates), in subsection (2)(a) omit “, in respect of the premises in question”.

**Commencement Information**

**I35** Sch. 2 para. 9 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 10 In section 57 (special procedure for providers registered in the early years register), in subsection (2) omit “in respect of particular premises”, “on the same premises” and “, in respect of the premises”.

**Commencement Information**

**I36** Sch. 2 para. 10 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 11 In section 57A (special procedure for providers registered with early years childminder agencies)—
- (a) in subsection (3), omit “in respect of particular premises”;
  - (b) in subsection (4), omit “on the same premises” and “, in respect of the premises”.

**Commencement Information**

**I37** Sch. 2 para. 11 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 12 In section 63 (applications for registration on the general register: other childcare providers), in subsection (1), omit “in respect of the premises”.

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#### Commencement Information

**I38** Sch. 2 para. 12 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 13 In section 64 (entry on the register and certificates), in subsection (2), omit “, in respect of the premises in question”.

#### Commencement Information

**I39** Sch. 2 para. 13 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 14 In section 65 (special procedure for persons already registered in a childcare register), in subsection (2) omit “in respect of particular premises”, “in respect of the same premises” and “, in respect of the premises”.

#### Commencement Information

**I40** Sch. 2 para. 14 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 15 In section 65A (procedure for persons already registered with a childminder agency)—
- (a) in subsection (3), omit “in respect of particular premises” and “the provision on the same premises of”;
  - (b) in subsection (4), omit “, in respect of the premises”.

#### Commencement Information

**I41** Sch. 2 para. 15 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

- 16 In section 69 (suspension of registration in a childcare register: early years and later years providers)—
- (a) after subsection (1) insert—
    - “(1A) Regulations under subsection (1) may in particular provide that registration may be suspended generally or only in relation to particular premises.”;
  - (b) in subsection (3), for the words after “childminder” substitute “—
    - (a) may not provide early years childminding at any time when his registration under that Chapter is suspended generally in accordance with regulations under this section;
    - (b) may not provide early years childminding on particular premises at any time when his registration under that Chapter is suspended in relation to those premises in accordance with regulations under this section.”;
  - (c) in subsection (4), for the words after “childminder” substitute “—
    - (a) may not provide later years childminding at any time when his registration under that Chapter is suspended generally in accordance with regulations under this section;

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- (b) may not provide later years childminding on particular premises at any time when his registration under that Chapter is suspended in relation to those premises in accordance with regulations under this section.”;
- (d) in subsection (6), for the words after “childminder” substitute “—
  - (a) may not provide early years provision at any time when his registration under that Chapter is suspended generally in accordance with regulations under this section;
  - (b) may not provide early years provision on particular premises at any time when his registration under that Chapter is suspended in relation to those premises in accordance with regulations under this section.”;
- (e) in subsection (7), for the words after “childminder” substitute “—
  - (a) may not provide later years provision, for a child who has not attained the age of 8, at any time when his registration under that Chapter is suspended generally in accordance with regulations under this section;
  - (b) may not provide later years provision, for a child who has not attained the age of 8, on particular premises at any time when his registration under that Chapter is suspended in relation to those premises in accordance with regulations under this section.”

**Commencement Information**

**I42** Sch. 2 para. 16(a) in force at 15.6.2015 by [S.I. 2015/1329](#), [reg. 4](#)

**I43** Sch. 2 para. 16(b)(e) in force at 1.1.2016 by [S.I. 2015/1329](#), [reg. 6\(b\)](#)

17 After section 85 (offence of making false or misleading statement) insert—

**“85A Offence of providing provision other than on approved premises**

The Secretary of State may by regulations provide—

- (a) that a person who without reasonable excuse fails to comply with a prescribed requirement falling within section 35(5)(b), 36(5)(b), 54(5)(b) or 55(5)(b) (premises) is guilty of an offence, and
- (b) that a person guilty of the offence is liable on summary conviction to a fine.”

**Commencement Information**

**I44** Sch. 2 para. 17 in force at 15.6.2015 by [S.I. 2015/1329](#), [reg. 4](#)

18 Omit section 94 (power to amend Part 3: applications in respect of multiple premises).

**Commencement Information**

**I45** Sch. 2 para. 18 in force at 1.1.2016 by [S.I. 2015/1329](#), [reg. 6\(b\)](#)

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- 19 Omit section 105(3)(c) (procedure for an order under section 94) and the “or” immediately preceding it.

**Commencement Information**

**I46** Sch. 2 para. 19 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

*Water Industry Act 1991*

- 20 In paragraph 12(1) of Schedule 4A to the Water Industry Act 1991 (premises that are not to be disconnected) omit “in respect of the premises”.

**Commencement Information**

**I47** Sch. 2 para. 20 in force at 1.1.2016 by S.I. 2015/1329, reg. 6(b)

SCHEDULE 3

Section 81

REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL

**PART 1**

DUTY TO OBTAIN INFORMATION AND KEEP REGISTER

- 1 After Part 21 of the Companies Act 2006 insert—

**“PART 21A**

INFORMATION ABOUT PEOPLE WITH SIGNIFICANT CONTROL

**CHAPTER 1**

INTRODUCTION

**Overview**

790A This Part is arranged as follows—

- (a) the remaining provisions of this Chapter identify the companies to which this Part applies and explain some key terms, including what it means to have “significant control” over a company,
- (b) Chapter 2 imposes duties on companies to gather information, and on others to supply information, to enable companies to keep the register required by Chapter 3,
- (c) Chapter 3 requires companies to keep a register, referred to as a register of people with significant control over the company, and to make the register available to the public,

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- (d) Chapter 4 gives private companies the option of using an alternative method of record-keeping, and
- (e) Chapter 5 makes provision for excluding certain material from the information available to the public.

### **Companies to which this Part applies**

790B) This Part applies to companies other than—

- (a) DTR5 issuers, and
  - (b) companies of any description specified by the Secretary of State by regulations.
- (2) In deciding whether to specify a description of company, the Secretary of State is to have regard to the extent to which companies of that description are bound by disclosure and transparency rules (in the United Kingdom or elsewhere) broadly similar to the ones applying to DTR5 issuers.
- (3) A “DTR5 issuer” is an issuer to which Chapter 5 of the Disclosure Rules and Transparency Rules sourcebook made by the Financial Conduct Authority (as amended or replaced from time to time) applies.
- (4) Regulations under this section are subject to affirmative resolution procedure.

### **Key terms**

790C) This section explains some key terms used in this Part.

- (2) References to a person with (or having) “significant control” over a company are to an individual who meets one or more of the specified conditions in relation to the company.
- (3) The “specified conditions” are those specified in Part 1 of Schedule 1A.
- (4) Individuals with significant control over a company are either “registrable” or “non-registrable” in relation to the company—
- (a) they are “non-registrable” if they do not hold any interest in the company except through one or more other legal entities over each of which they have significant control and each of which is a “relevant legal entity” in relation to the company;
  - (b) otherwise, they are “registrable”,
- and references to a “registrable person” in relation to a company are to an individual with significant control over the company who is registrable in relation to that company.
- (5) A “legal entity” is a body corporate or a firm that is a legal person under the law by which it is governed.
- (6) In relation to a company, a legal entity is a “relevant legal entity” if—
- (a) it would have come within the definition of a person with significant control over the company if it had been an individual, and
  - (b) it is subject to its own disclosure requirements.
- (7) A legal entity is “subject to its own disclosure requirements” if—

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- (a) this Part applies to it (whether by virtue of section 790B or another enactment that extends the application of this Part),
  - (b) it is a DTR5 issuer,
  - (c) it is of a description specified in regulations under section 790B (or that section as extended), or
  - (d) it is of a description specified by the Secretary of State by regulations made under this paragraph.
- (8) A relevant legal entity is either “registrable” or “non-registrable” in relation to a company—
- (a) it is “non-registrable” if it does not hold any interest in the company except through one or more other legal entities over each of which it has significant control and each of which is also a relevant legal entity in relation to the company;
  - (b) otherwise, it is “registrable”,
- and references to a “registrable relevant legal entity” in relation to a company are to a relevant legal entity which is registrable in relation to that company.
- (9) For the purposes of subsections (4) and (8)—
- (a) whether someone—
    - (i) holds an interest in a company, or
    - (ii) holds that interest through another legal entity,
 is to be determined in accordance with Part 2 of Schedule 1A;
  - (b) whether someone has significant control over that other legal entity is to be determined in accordance with subsections (2) and (3) and Part 1 of Schedule 1A, reading references in those provisions to the company as references to that other entity.
- (10) The register that a company is required to keep under section 790M (register of people with significant control over a company) is referred to as the company's “PSC register”.
- (11) In deciding whether to specify a description of legal entity under paragraph (d) of subsection (7), the Secretary of State is to have regard to the extent to which entities of that description are bound by disclosure and transparency rules (in the United Kingdom or elsewhere) broadly similar to the ones applying to an entity falling within any other paragraph of that subsection.
- (12) Subject to express provision in this Part and to any modification prescribed by regulations under this subsection, this Part is to be read and have effect as if each of the following were an individual, even if they are legal persons under the laws by which they are governed—
- (a) a corporation sole,
  - (b) a government or government department of a country or territory or a part of a country or territory,
  - (c) an international organisation whose members include two or more countries or territories (or their governments),
  - (d) a local authority or local government body in the United Kingdom or elsewhere.

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- (13) Regulations under subsection (7)(d) are subject to affirmative resolution procedure.
- (14) Subject to subsection (13), regulations under this section are subject to negative resolution procedure.

## CHAPTER 2

### INFORMATION-GATHERING

#### *Duty on companies*

#### **Company's duty to investigate and obtain information**

- 790D) A company to which this Part applies must take reasonable steps—
- (a) to find out if there is anyone who is a registrable person or a registrable relevant legal entity in relation to the company, and
  - (b) if so, to identify them.
- (2) Without limiting subsection (1), a company to which this Part applies must give notice to anyone whom it knows or has reasonable cause to believe to be a registrable person or a registrable relevant legal entity in relation to it.
- (3) The notice, if addressed to an individual, must require the addressee—
- (a) to state whether or not he or she is a registrable person in relation to the company (within the meaning of this Part), and
  - (b) if so, to confirm or correct any particulars of his or hers that are included in the notice, and supply any that are missing.
- (4) The notice, if addressed to a legal entity, must require the addressee—
- (a) to state whether or not it is a registrable relevant legal entity in relation to the company (within the meaning of this Part), and
  - (b) if so, to confirm or correct any of its particulars that are included in the notice, and supply any that are missing.
- (5) A company to which this Part applies may also give notice to a person under this section if it knows or has reasonable cause to believe that the person—
- (a) knows the identity of someone who falls within subsection (6), or
  - (b) knows the identity of someone likely to have that knowledge.
- (6) The persons who fall within this subsection are—
- (a) any registrable person in relation to the company;
  - (b) any relevant legal entity in relation to the company;
  - (c) any entity which would be a relevant legal entity in relation to the company but for the fact that section 790C(6)(b) does not apply in respect of it.
- (7) A notice under subsection (5) may require the addressee—
- (a) to state whether or not the addressee knows the identity of—
    - (i) any person who falls within subsection (6), or
    - (ii) any person likely to have that knowledge, and

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- (b) if so, to supply any particulars of theirs that are within the addressee's knowledge, and state whether or not the particulars are being supplied with the knowledge of each of the persons concerned.
- (8) A notice under this section must state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.
- (9) The Secretary of State may by regulations make further provision about the giving of notices under this section, including the form and content of any such notices and the manner in which they must be given.
- (10) Regulations under subsection (9) are subject to negative resolution procedure.
- (11) A company is not required to take steps or give notice under this section with respect to a registrable person or registrable relevant legal entity if—
  - (a) the company has already been informed of the person's status as a registrable person or registrable relevant legal entity in relation to it, and been supplied with all the particulars, and
  - (b) in the case of a registrable person, the information and particulars were provided either by the person concerned or with his or her knowledge.
- (12) A person to whom a notice under subsection (5) is given is not required by that notice to disclose any information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (13) In this section—
  - (a) a reference to knowing the identity of a person includes knowing information from which that person can be identified, and
  - (b) “particulars” means—
    - (i) in the case of a registrable person or a registrable relevant legal entity, the required particulars (see section 790K), and
    - (ii) in any other case, any particulars that will allow the person to be contacted by the company.

### **Company's duty to keep information up-to-date**

- 790E) This section applies if particulars of a registrable person or registrable relevant legal entity are stated in a company's PSC register.
- (2) The company must give notice to the person or entity if the company knows or has reasonable cause to believe that a relevant change has occurred.
  - (3) In the case of a registrable person, a “relevant change” occurs if—
    - (a) the person ceases to be a registrable person in relation to the company, or
    - (b) any other change occurs as a result of which the particulars stated for the person in the PSC register are incorrect or incomplete.
  - (4) In the case of a registrable relevant legal entity, a “relevant change” occurs if—



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- (a) the entity ceases to be a registrable relevant legal entity in relation to the company, or
  - (b) any other change occurs as a result of which the particulars stated for the entity in the PSC register are incorrect or incomplete.
- (5) The company must give the notice as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred.
- (6) The notice must require the addressee—
- (a) to confirm whether or not the change has occurred, and
  - (b) if so—
    - (i) to state the date of the change, and
    - (ii) to confirm or correct the particulars included in the notice, and supply any that are missing from the notice.
- (7) Subsections (8) to (10) of section 790D apply to notices under this section as to notices under that section.
- (8) A company is not required to give notice under this section if—
- (a) the company has already been informed of the relevant change, and
  - (b) in the case of a registrable person, that information was provided either by the person concerned or with his or her knowledge.

### **Failure by company to comply with information duties**

- 790(F) If a company fails to comply with a duty under section 790D or 790E to take steps or give notice, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or a fine (or both);
    - (ii) in Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (iii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).

### *Duty on others*

### **Duty to supply information**

- 790(G) This section applies to a person if—
- (a) the person is a registrable person or a registrable relevant legal entity in relation to a company,

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- (b) the person knows that to be the case or ought reasonably to do so,
  - (c) the required particulars of the person are not stated in the company's PSC register,
  - (d) the person has not received notice from the company under section 790D(2), and
  - (e) the circumstances described in paragraphs (a) to (d) have continued for a period of at least one month.
- (2) The person must—
- (a) notify the company of the person's status (as a registrable person or registrable relevant legal entity) in relation to the company,
  - (b) state the date, to the best of the person's knowledge, on which the person acquired that status, and
  - (c) give the company the required particulars (see section 790K).
- (3) The duty under subsection (2) must be complied with by the end of the period of one month beginning with the day on which all the conditions in subsection (1)(a) to (e) were first met with respect to the person.

#### **Duty to update information**

790H(1) This section applies to a person if—

- (a) the required particulars of the person (whether a registrable person or a registrable relevant legal entity) are stated in a company's PSC register,
  - (b) a relevant change occurs,
  - (c) the person knows of the change or ought reasonably to do so,
  - (d) the company's PSC register has not been altered to reflect the change, and
  - (e) the person has not received notice from the company under section 790E by the end of the period of one month beginning with the day on which the change occurred.
- (2) The person must—
- (a) notify the company of the change,
  - (b) state the date on which it occurred, and
  - (c) give the company any information needed to update the PSC register.
- (3) The duty under subsection (2) must be complied with by the later of—
- (a) the end of the period of 2 months beginning with the day on which the change occurred, and
  - (b) the end of the period of one month beginning with the day on which the person discovered the change.
- (4) “Relevant change” has the same meaning as in section 790E.

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## *Compliance*

### **Enforcement of disclosure requirements**

790I Schedule 1B contains provisions for when a person (whether an individual or a legal entity) fails to comply with a notice under section 790D or 790E or a duty under section 790G or 790H.

### *Exemption from information and registration requirements*

### **Power to make exemptions**

790J) The Secretary of State may exempt a person (whether an individual or a legal entity) under this section.

(2) The effect of an exemption is—

- (a) the person is not required to comply with any notice under section 790D(2) or 790E (but if a notice is received, the person must bring the existence of the exemption to the attention of the company that sent it),
- (b) companies are not obliged to take steps or give notice under those sections to or with respect to that person,
- (c) notices under section 790D(5) do not require anyone else to give any information about that person,
- (d) the duties imposed by sections 790G and 790H do not apply to that person, and
- (e) the person does not count for the purposes of section 790M as a registrable person or, as the case may be, a registrable relevant legal entity in relation to any company.

(3) The Secretary of State must not grant an exemption under this section unless the Secretary of State is satisfied that, having regard to any undertaking given by the person to be exempted, there are special reasons why that person should be exempted.

### *Required particulars*

### **Required particulars**

790K) The “required particulars” of an individual who is a registrable person are—

- (a) name,
- (b) a service address,
- (c) the country or state (or part of the United Kingdom) in which the individual is usually resident,
- (d) nationality,
- (e) date of birth,
- (f) usual residential address,
- (g) the date on which the individual became a registrable person in relation to the company in question,

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- (h) the nature of his or her control over that company (see Schedule 1A), and
  - (i) if, in relation to that company, restrictions on using or disclosing any of the individual's PSC particulars are in force under regulations under section 790ZG, that fact.
- (2) In the case of a person in relation to which this Part has effect by virtue of section 790C(12) as if the person were an individual, the “required particulars” are—
- (a) name,
  - (b) principal office,
  - (c) the legal form of the person and the law by which it is governed,
  - (d) the date on which it became a registrable person in relation to the company in question, and
  - (e) the nature of its control over the company (see Schedule 1A).
- (3) The “required particulars” of a registrable relevant legal entity are—
- (a) corporate or firm name,
  - (b) registered or principal office,
  - (c) the legal form of the entity and the law by which it is governed,
  - (d) if applicable, the register of companies in which it is entered (including details of the state) and its registration number in that register,
  - (e) the date on which it became a registrable relevant legal entity in relation to the company in question, and
  - (f) the nature of its control over that company (see Schedule 1A).
- (4) Section 163(2) (particulars of directors to be registered: individuals) applies for the purposes of subsection (1).
- (5) The Secretary of State may by regulations make further provision about the particulars required by subsections (1)(h), (2)(e) and (3)(f).
- (6) Regulations under subsection (5) are subject to negative resolution procedure.

### **Required particulars: power to amend**

- 790M(1) The Secretary of State may by regulations amend section 790K so as to add to or remove from any of the lists of required particulars.
- (2) Regulations under this section are subject to affirmative resolution procedure.

## **CHAPTER 3**

### REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL

#### **Duty to keep register**

- 790M(1) A company to which this Part applies must keep a register of people with significant control over the company.

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- (2) The required particulars of any individual with significant control over the company who is “registrable” in relation to the company must be entered in the register once all the required particulars of that individual have been confirmed.
- (3) The company must not enter any of the individual's particulars in the register until they have all been confirmed.
- (4) Particulars of any individual with significant control over the company who is “non-registrable” in relation to the company must not be entered in the register.
- (5) But the required particulars of any entity that is a registrable relevant legal entity in relation to the company must be noted in the register once the company becomes aware of the entity's status as such.
- (6) If the company becomes aware of a relevant change (within the meaning of section 790E) with respect to a registrable person or registrable relevant legal entity whose particulars are stated in the register—
  - (a) details of the change and the date on which it occurred must be entered in the register, but
  - (b) in the case of a registrable person, the details and date must not be entered there until they have all been confirmed.
- (7) The Secretary of State may by regulations require additional matters to be noted in a company's PSC register.
- (8) Regulations under subsection (7) are subject to affirmative resolution procedure.
- (9) A person's required particulars, and the details and date of any relevant change with respect to a person, are considered for the purposes of this section to have been “confirmed” if—
  - (a) the person supplied or confirmed them to the company (whether voluntarily, pursuant to a duty imposed by this Part or otherwise),
  - (b) another person did so but with that person's knowledge, or
  - (c) they were included in a statement of initial significant control delivered to the registrar under section 9 by subscribers wishing to form the company.
- (10) In the case of someone who was a registrable person or a registrable relevant legal entity in relation to the company on its incorporation—
  - (a) the date to be entered in the register as the date on which the individual became a registrable person, or the entity became a registrable relevant legal entity, is to be the date of incorporation, and
  - (b) in the case of a registrable person, that particular is deemed to have been “confirmed”.
- (11) For the purposes of this section—
  - (a) if a person's usual residential address is the same as his or her service address, the entry for him or her in the register may state that fact instead of repeating the address (but this does not apply in a case

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- where the service address is stated to be “The company's registered office”);
- (b) nothing in section 126 (trusts not to be entered on register) affects what may be entered in a company's PSC register or is receivable by the registrar in relation to people with significant control over a company (even if they are members of the company);
  - (c) see section 790J (exemptions) for cases where a person does not count as a registrable person or a registrable relevant legal entity.
- (12) If a company makes default in complying with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (13) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (14) A company to which this Part applies is not by virtue of anything done for the purposes of this section affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or rights in or with respect to the company.

### **Register to be kept available for inspection**

- 790N) A company's PSC register must be kept available for inspection—
- (a) at its registered office, or
  - (b) at a place specified in regulations under section 1136.
- (2) A company must give notice to the registrar of the place where its PSC register is kept available for inspection and of any change in that place.
- (3) No such notice is required if the register has, at all times since it came into existence, been kept available for inspection at the company's registered office.
- (4) If a company makes default for 14 days in complying with subsection (2), an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **Rights to inspect and require copies**

- 790O) A company's PSC register must be open to the inspection of any person without charge.
- (2) Any person may require a copy of a company's PSC register, or any part of it, on payment of such fee as may be prescribed.

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- (3) A person seeking to exercise either of the rights conferred by this section must make a request to the company to that effect.
- (4) The request must contain the following information—
  - (a) in the case of an individual, his or her name and address,
  - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation, and
  - (c) the purpose for which the information is to be used.

#### **PSC register: response to request for inspection or copy**

- 790P(1) Where a company receives a request under section 790O, it must within 5 working days either—
- (a) comply with the request, or
  - (b) apply to the court.
- (2) If it applies to the court, it must notify the person making the request.
- (3) If on an application under this section the court is satisfied that the inspection or copy is not sought for a proper purpose—
- (a) it must direct the company not to comply with the request, and
  - (b) it may further order that the company's costs (in Scotland, expenses) on the application be paid in whole or in part by the person who made the request, even if that person is not a party to the application.
- (4) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request.
- The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.
- (5) If on an application under this section the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

#### **PSC register: refusal of inspection or default in providing copy**

- 790Q(1) If an inspection required under section 790O is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

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- (3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

### **PSC register: offences in connection with request for or disclosure of information**

790R(1) It is an offence for a person knowingly or recklessly to make in a request under section 790O a statement that is misleading, false or deceptive in a material particular.

- (2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section—

- (a) to do anything that results in the information being disclosed to another person, or
- (b) to fail to do anything with the result that the information is disclosed to another person,

knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.

- (3) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction—
  - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine (or both);
  - (ii) in Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
  - (iii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).

### **Information as to state of register**

790S(1) Where a person inspects the PSC register, or the company provides a person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register and whether there are further alterations to be made.

- (2) If a company fails to provide the information required under subsection (1), an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Protected information**

790T(1) Section 790N and subsections (1) and (2) of section 790O are subject to—



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- (a) section 790ZF (protection of information as to usual residential address), and
  - (b) any provision of regulations made under section 790ZG (protection of material).
- (2) Subsection (1) is not to be taken to affect the generality of the power conferred by virtue of section 790ZG(3)(f).

### **Removal of entries from the register**

- 790(1) An entry relating to an individual who used to be a registrable person may be removed from the company's PSC register after the expiration of 10 years from the date on which the individual ceased to be a registrable person in relation to the company.
- (2) An entry relating to an entity that used to be a registrable relevant legal entity may be removed from the company's PSC register after the expiration of 10 years from the date on which the entity ceased to be a registrable relevant legal entity in relation to the company.

### **Power of court to rectify register**

- 790(1) If—
- (a) the name of any person is, without sufficient cause, entered in or omitted from a company's PSC register as a registrable person or registrable relevant legal entity, or
  - (b) default is made or unnecessary delay takes place in entering on the PSC register the fact that a person has ceased to be a registrable person or registrable relevant legal entity,
- the person aggrieved or any other interested party may apply to the court for rectification of the register.
- (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.
- (3) On such an application, the court may—
- (a) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the register, and
  - (b) more generally, decide any question necessary or expedient to be decided for rectification of the register.
- (4) In the case of a company required by this Act to send information stated in its PSC register to the registrar of companies, the court, when making an order for rectification of the register, must by its order direct notice of the rectification to be given to the registrar.
- (5) The reference in this section to “any other interested party” is to—
- (a) any member of the company, and
  - (b) any other person who is a registrable person or a registrable relevant legal entity in relation to the company.

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## CHAPTER 4

### ALTERNATIVE METHOD OF RECORD-KEEPING

#### Introductory

- 790W) This Chapter sets out rules allowing private companies to keep information on the register kept by the registrar instead of entering it in their PSC register.
- (2) The register kept by the registrar (see section 1080) is referred to in this Chapter as “the central register”.
  - (3) Chapter 3 must be read with this Chapter.
  - (4) Nothing in this Chapter affects the duties imposed by Chapter 2.
  - (5) Where an election under section 790X is in force in respect of a company, references in Chapter 2 to the company's PSC register are to be read as references to the central register.

#### Right to make an election

- 790X) An election may be made under this section—
- (a) by the subscribers wishing to form a private company under this Act, or
  - (b) by the private company itself once it is formed and registered.
- (2) The election is of no effect unless—
- (a) notice of the intention to make the election was given to each eligible person at least 14 days before the day on which the election was made, and
  - (b) no objection was received by the subscribers or, as the case may be, the company from any eligible person within that notice period.
- (3) A person is an “eligible person” if—
- (a) in a case of an election by the subscribers wishing to form a private company, the person's particulars would, but for the election, be required to be entered in the company's PSC register on its incorporation, and
  - (b) in the case of an election by the company itself—
    - (i) the person is a registrable person or a registrable relevant legal entity in relation to the company, and
    - (ii) the person's particulars are stated in the company's PSC register.
- (4) An election under this section is made by giving notice of election to the registrar.
- (5) If the notice is given by subscribers wishing to form a private company—
- (a) it must be given when the documents required to be delivered under section 9 are delivered to the registrar, and

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- (b) it must be accompanied by a statement confirming that no objection was received as mentioned in subsection (2).
- (6) If the notice is given by the company, it must be accompanied by—
  - (a) a statement confirming that no objection was received as mentioned in subsection (2), and
  - (b) a statement containing all the information that is required to be contained in the company's PSC register as at the date of the notice in respect of matters that are current as at that date.
- (7) The company must where necessary update the statement sent under subsection (6)(b) to ensure that the final version delivered to the registrar contains all the information that is required to be contained in the company's PSC register as at the time immediately before the election takes effect (see section 790Y) in respect of matters that are current as at that time.
- (8) The obligation in subsection (7) to update the statement includes an obligation to rectify it (where necessary) in consequence of the company's PSC register being rectified (whether before or after the election takes effect).
- (9) If default is made in complying with subsection (7), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.
- (10) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (11) A reference in this Chapter to matters that are current as at a given date or time is a reference to—
  - (a) persons who are a registrable person or registrable relevant legal entity in relation to the company as at that date or time and whose particulars are required to be contained in the company's PSC register as at that date or time, and
  - (b) any other matters that are current as at that date or time.

### **Effective date of election**

- ~~790X~~(1) An election made under section 790X takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
  - (a) the company ceases to be a private company, or
  - (b) a notice of withdrawal sent by the company under section 790ZD is registered by the registrar,whichever occurs first.

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### **Effect of election on obligations under Chapter 3**

- 790Z1) The effect of an election under section 790X on a company's obligations under Chapter 3 is as follows.
- (2) The company's obligation to maintain a PSC register does not apply with respect to the period when the election is in force.
  - (3) This means that, during that period—
    - (a) the company must continue to keep a PSC register in accordance with Chapter 3 (a “historic” register) containing all the information that was required to be stated in that register as at the time immediately before the election took effect, but
    - (b) the company does not have to update that register to reflect any changes that occur after that time.
  - (4) The provisions of Chapter 3 (including the rights to inspect or require copies of the PSC register) continue to apply to the historic register during the period when the election is in force.
  - (5) The company must place a note in its historic register—
    - (a) stating that an election under section 790X is in force,
    - (b) recording when that election took effect, and
    - (c) indicating that up-to-date information about people with significant control over the company is available for public inspection on the central register.
  - (6) Subsections (12) and (13) of section 790M apply if a company makes default in complying with subsection (5) as they apply if a company makes default in complying with that section.
  - (7) The obligations under this section with respect to a historic register do not apply in a case where the election was made by subscribers wishing to form a private company.

### **Duty to notify registrar of changes**

- 790ZA1) The duty under subsection (2) applies during the period when an election under section 790X is in force.
- (2) The company must deliver to the registrar any information that the company would during that period have been obliged under Chapter 3 to enter in its PSC register, had the election not been in force.
  - (3) The information must be delivered as soon as reasonably practicable after the company becomes aware of it and, in any event, no later than the time by which the company would have been required to enter the information in its PSC register.
  - (4) If default is made in complying with this section, an offence is committed by—
    - (a) the company, and
    - (b) every officer of the company who is in default.

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For this purpose a shadow director is treated as an officer of the company.

- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **Information as to state of central register**

790Z(B) When a person inspects or requests a copy of material on the central register relating to a company in respect of which an election under section 790X is in force, the person may ask the company to confirm that all information that the company is required to deliver to the registrar under this Chapter has been delivered.

- (2) If a company fails to respond to a request under subsection (1), an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Power of court to order company to remedy default or delay**

790Z(C) This section applies if—

- (a) the name of a person is without sufficient cause included in, or omitted from, information that a company delivers to the registrar under this Chapter concerning persons who are a registrable person or a registrable relevant legal entity in relation to the company, or
  - (b) default is made or unnecessary delay takes place in informing the registrar under this Chapter that a person—
    - (i) has become a registrable person or a registrable relevant legal entity in relation to the company, or
    - (ii) has ceased to be a registrable person or a registrable relevant legal entity in relation to it.
- (2) The person aggrieved, or any other interested party, may apply to the court for an order requiring the company to deliver to the registrar the information (or statements) necessary to rectify the position.
- (3) The court may either refuse the application or may make the order and order the company to pay any damages sustained by any party aggrieved.
- (4) On such an application the court may decide—
- (a) any question as to whether the name of any person who is a party to the application should or should not be included in or omitted from information delivered to the registrar under this Chapter about persons who are a registrable person or a registrable relevant legal entity in relation to the company, and
  - (b) any question necessary or expedient to be decided for rectifying the position.

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- (5) Nothing in this section affects a person's rights under section 1095 or 1096 (rectification of register on application to registrar or under court order).
- (6) The reference in this section to “any other interested party” is to—
  - (a) any member of the company, and
  - (b) any other person who is a registrable person or a registrable relevant legal entity in relation to the company.

### **Withdrawing the election**

- 790ZD) A company may withdraw an election made by or in respect of it under section 790X.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
  - (3) The withdrawal takes effect when the notice is registered by the registrar.
  - (4) The effect of withdrawal is that the company's obligation under Chapter 3 to maintain a PSC register applies from then on with respect to the period going forward.
  - (5) This means that, when the withdrawal takes effect—
    - (a) the company must enter in its PSC register all the information that is required to be contained in that register in respect of matters that are current as at that time,
    - (b) the company must also retain in its register all the information that it was required under section 790Z(3)(a) to keep in a historic register while the election was in force, but
    - (c) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.
  - (6) The company must place a note in its PSC register—
    - (a) stating that the election under section 790X has been withdrawn,
    - (b) recording when that withdrawal took effect, and
    - (c) indicating that information about people with significant control over the company relating to the period when the election was in force that is no longer current is available for public inspection on the central register.
  - (7) Subsections (12) and (13) of section 790M apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.

### **Power to extend option to public companies**

- 790ZE) The Secretary of State may by regulations amend this Act—
- (a) to extend this Chapter (with or without modification) to public companies or public companies of a class specified in the regulations, and
  - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.

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- (2) Regulations under this section are subject to affirmative resolution procedure.

## CHAPTER 5

### PROTECTION FROM DISCLOSURE

#### Protection of information as to usual residential address

790Z(F) The provisions of sections 240 to 244 (directors' residential addresses: protection from disclosure) apply to information within subsection (2) as to protected information within the meaning of those sections.

- (2) The information within this subsection is—
- (a) information as to the usual residential address of a person with significant control over a company, and
  - (b) the information that such a person's service address is his or her usual residential address.
- (3) Subsection (1) does not apply to information relating to a person if an application under regulations made under section 790ZG has been granted with respect to that information and not been revoked.

#### Power to make regulations protecting material

790Z(G) The Secretary of State may by regulations make provision requiring the registrar and the company to refrain from using or disclosing PSC particulars of a prescribed kind (or to refrain from doing so except in prescribed circumstances) where an application is made to the registrar requesting them to refrain from so doing.

- (2) “PSC particulars” are particulars of a person with significant control over the company—
- (a) including a person who used to be such a person, but
  - (b) excluding any person in relation to which this Part has effect by virtue of section 790C(12) as if the person were an individual.
- (3) Regulations under this section may make provision as to—
- (a) who may make an application,
  - (b) the grounds on which an application may be made,
  - (c) the information to be included in and documents to accompany an application,
  - (d) how an application is to be determined,
  - (e) the duration of and procedures for revoking the restrictions on use and disclosure,
  - (f) the operation of sections 790N to 790S in cases where an application is made, and
  - (g) the charging of fees by the registrar for disclosing PSC particulars where the regulations permit disclosure, by way of exception, in prescribed circumstances.

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- (4) Provision under subsection (3)(d) and (e) may in particular—
- (a) confer a discretion on the registrar;
  - (b) provide for a question to be referred to a person other than the registrar for the purposes of determining the application or revoking the restrictions.
- (5) Regulations under this section are subject to affirmative resolution procedure.
- (6) Nothing in this section or in regulations made under it affects the use or disclosure of particulars of a person in any other capacity (for example, the use or disclosure of particulars of a person in that person's capacity as a member or director of the company).”

#### Commencement Information

- I48** Sch. 3 para. 1 in force at 26.5.2015 for specified purposes by [S.I. 2015/1329](#), [reg. 3\(a\)](#)
- I49** Sch. 3 para. 1 in force at 6.4.2016 for specified purposes by [S.I. 2015/2029](#), [regs. 4\(a\)](#), [5\(a\)](#)
- I50** Sch. 3 para. 1 in force at 30.6.2016 in so far as not already in force by [S.I. 2015/2029](#), [regs. 4\(a\)](#), [5\(a\)](#)

2 After Schedule 1 to that Act insert—

“SCHEDULE  
1A

Section 790C

REFERENCES TO PEOPLE WITH SIGNIFICANT CONTROL OVER A COMPANY

**PART 1**

THE SPECIFIED CONDITIONS

*Introduction*

- 1 This Part of this Schedule specifies the conditions at least one of which must be met by an individual (“X”) in relation to a company (“company Y”) in order for the individual to be a person with “significant control” over the company.

*Ownership of shares*

- 2 The first condition is that X holds, directly or indirectly, more than 25% of the shares in company Y.

*Ownership of voting rights*

- 3 The second condition is that X holds, directly or indirectly, more than 25% of the voting rights in company Y.



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*Ownership of right to appoint or remove directors*

- 4 The third condition is that X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of company Y.

*Significant influence or control*

- 5 The fourth condition is that X has the right to exercise, or actually exercises, significant influence or control over company Y.

*Trusts, partnerships etc*

- 6 The fifth condition is that—
- (a) the trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person meet any of the other specified conditions (in their capacity as such) in relation to company Y, or would do so if they were individuals, and
  - (b) X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm.

## PART 2

### HOLDING AN INTEREST IN A COMPANY ETC

*Introduction*

- 7 This Part of this Schedule specifies the circumstances in which, for the purposes of section 790C(4) or (8)—
- (a) a person (“V”) is to be regarded as holding an interest in a company (“company W”);
  - (b) an interest held by V in company W is to be regarded as held through a legal entity.

*Holding an interest*

- 8 (1) V holds an interest in company W if—
- (a) V holds shares in company W, directly or indirectly,
  - (b) V holds, directly or indirectly, voting rights in company W,
  - (c) V holds, directly or indirectly, the right to appoint or remove any member of the board of directors of company W,
  - (d) V has the right to exercise, or actually exercises, significant influence or control over company W, or
  - (e) sub-paragraph (2) is satisfied.
- (2) This sub-paragraph is satisfied where—
- (a) the trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person hold an interest in company W in a way mentioned in sub-paragraph (1)(a) to (d), and

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- (b) V has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm.

*Interests held through a legal entity*

- 9 (1) This paragraph applies where V—
- (a) holds an interest in company W by virtue of indirectly holding shares or a right, and
  - (b) does so by virtue of having a majority stake (see paragraph 18) in—
    - (i) a legal entity (“L”) which holds the shares or right directly, or
    - (ii) a legal entity that is part of a chain of legal entities such as is described in paragraph 18(1)(b) or (2)(b) that includes L.
- (2) Where this paragraph applies, V holds the interest in company W—
- (a) through L, and
  - (b) through each other legal entity in the chain mentioned in subparagraph (1)(b)(ii).

**PART 3**

SUPPLEMENTARY PROVISION

*Introduction*

- 10 This Part sets out rules for the interpretation of this Schedule.

*Joint interests*

- 11 If two or more persons each hold a share or right jointly, each of them is treated for the purposes of this Schedule as holding that share or right.

*Joint arrangements*

- 12 (1) If shares or rights held by a person and shares or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as holding the combined shares or rights of both of them.
- (2) A “joint arrangement” is an arrangement between the holders of shares (or rights) that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement.
- (3) “Arrangement” has the meaning given by paragraph 21.

*Calculating shareholdings*

- 13 (1) In relation to a legal entity that has a share capital, a reference to holding “more than 25% of the shares” in that entity is to holding shares comprised in the issued share capital of that entity of a nominal value exceeding (in aggregate) 25% of that share capital.

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- (2) In relation to a legal entity that does not have a share capital—
  - (a) a reference to holding shares in that entity is to holding a right to share in the capital or, as the case may be, profits of that entity;
  - (b) a reference to holding “more than 25% of the shares” in that entity is to holding a right or rights to share in more than 25% of the capital or, as the case may be, profits of that entity.

#### *Voting rights*

- 14 (1) A reference to the voting rights in a legal entity is to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members) to vote at general meetings of the entity on all or substantially all matters.
- (2) In relation to a legal entity that does not have general meetings at which matters are decided by the exercise of voting rights—
  - (a) a reference to exercising voting rights in the entity is to be read as a reference to exercising rights in relation to the entity that are equivalent to those of a person entitled to exercise voting rights in a company;
  - (b) a reference to exercising more than 25% of the voting rights in the entity is to be read as a reference to exercising the right under the constitution of the entity to block changes to the overall policy of the entity or to the terms of its constitution.
- 15 In applying this Schedule, the voting rights in a legal entity are to be reduced by any rights held by the entity itself.

#### *Rights to appoint or remove members of the board*

- 16 A reference to the right to appoint or remove a majority of the board of directors of a legal entity is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.
- 17 References to a board of directors, in the case of an entity that does not have such a board, are to be read as references to the equivalent management body of that entity.

#### *Shares or rights held “indirectly”*

- 18 (1) A person holds a share “indirectly” if the person has a majority stake in a legal entity and that entity—
  - (a) holds the share in question, or
  - (b) is part of a chain of legal entities—
    - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
    - (ii) the last of which holds the share.
- (2) A person holds a right “indirectly” if the person has a majority stake in a legal entity and that entity—
  - (a) holds that right, or

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- (b) is part of a chain of legal entities—
  - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
  - (ii) the last of which holds that right.
- (3) For these purposes, A has a “majority stake” in B if—
  - (a) A holds a majority of the voting rights in B,
  - (b) A is a member of B and has the right to appoint or remove a majority of the board of directors of B,
  - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
  - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (4) In the application of this paragraph to the right to appoint or remove a majority of the board of directors, a legal entity is to be treated as having the right to appoint a director if—
  - (a) a person's appointment as director follows necessarily from that person's appointment as director of the legal entity, or
  - (b) the directorship is held by the legal entity itself.

*Shares held by nominees*

- 19 A share held by a person as nominee for another is to be treated for the purposes of this Schedule as held by the other (and not by the nominee).

*Rights treated as held by person who controls their exercise*

- 20 (1) Where a person controls a right, the right is to be treated for the purposes of this Schedule as held by that person (and not by the person who in fact holds the right, unless that person also controls it).
- (2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only—
- (a) by that person,
  - (b) in accordance with that person's directions or instructions, or
  - (c) with that person's consent or concurrence.
- 21 (1) “Arrangement” includes—
- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
  - (b) any convention, custom or practice of any kind.
- (2) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

*Rights exercisable only in certain circumstances etc*

- 22 (1) Rights that are exercisable only in certain circumstances are to be taken into account only—

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- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
  - (b) when the circumstances are within the control of the person having the rights.
- (2) But rights that are exercisable by an administrator or by creditors while a legal entity is in relevant insolvency proceedings are not to be taken into account even while the entity is in those proceedings.
- (3) “Relevant insolvency proceedings” means—
  - (a) administration within the meaning of the Insolvency Act 1986,
  - (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (c) proceedings under the insolvency law of another country or territory during which an entity's assets and affairs are subject to the control or supervision of a third party or creditor.
- (4) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

*Rights attached to shares held by way of security*

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

*Significant influence or control*

- 24 (1) The Secretary of State must issue guidance about the meaning of “significant influence or control” for the purposes of this Schedule.
- (2) Regard must be had to that guidance in interpreting references in this Schedule to “significant influence or control”.
  - (3) Before issuing guidance under this paragraph the Secretary of State must lay a draft of it before Parliament.
  - (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft guidance, the Secretary of State must take no further steps in relation to it.
  - (5) If no such resolution is made within that period, the Secretary of State must issue and publish the guidance in the form of the draft.
  - (6) Sub-paragraph (4) does not prevent a new draft of proposed guidance from being laid before Parliament.
  - (7) In this section “the 40-day period”, in relation to draft guidance, means the period of 40 days beginning with the day on which the draft is laid before

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Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).

- (8) In calculating the 40-day period, no account is to be taken of any period during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) both Houses are adjourned for more than 4 days.
- (9) The Secretary of State may revise guidance issued under this paragraph, and a reference in this paragraph to guidance includes a reference to revised guidance.

#### *Limited partnerships*

- 25 (1) An individual does not meet the specified condition in paragraph 2, 3 or 4 in relation to a company by virtue only of being a limited partner.
- (2) An individual does not meet the specified condition in paragraph 2, 3 or 4 in relation to a company by virtue only of, directly or indirectly—
- (a) holding shares, or
  - (b) holding a right,
- in or in relation to a limited partner which (in its capacity as such) would meet the condition if it were an individual.
- (3) Sub-paragraphs (1) and (2) do not apply for the purposes of determining whether the requirement set out in paragraph (a) of the specified condition in paragraph 6 is met.
- (4) In this paragraph “limited partner” means—
- (a) a limited partner in a limited partnership registered under the Limited Partnerships Act 1907 (other than one who takes part in the management of the partnership business), or
  - (b) a foreign limited partner.
- (5) In this paragraph “foreign limited partner” means an individual who—
- (a) participates in arrangements established under the law of a country or territory outside the United Kingdom, and
  - (b) has the characteristics prescribed by regulations made by the Secretary of State.
- (6) Regulations under this paragraph may, in particular, prescribe characteristics by reference to—
- (a) the nature of arrangements;
  - (b) the nature of an individual's participation in the arrangements.
- (7) Regulations under this paragraph are subject to affirmative resolution procedure.

*Status: Point in time view as at 25/05/2018.*

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## PART 4

### POWER TO AMEND THRESHOLDS ETC

- 26 (1) The Secretary of State may by regulations amend this Schedule for a permitted purpose.
- (2) The permitted purposes are—
- (a) to replace any or all references in this Schedule to a percentage figure with references to some other (larger or smaller) percentage figure;
  - (b) to change or supplement the specified conditions in Part 1 of this Schedule so as to include circumstances (for example, circumstances involving more complex structures) that give individuals a level of control over company Y broadly similar to the level of control given by the other specified conditions;
  - (c) in consequence of any provision made by virtue of paragraph (b), to change or supplement Part 2 of this Schedule so that circumstances specified in that Part in which a person is to be regarded as holding an interest in a company correspond to any of the specified conditions, or would do so but for the extent of the interest.
- (3) Regulations under this paragraph are subject to affirmative resolution procedure.

## SCHEDULE 1B

Section 790I

### ENFORCEMENT OF DISCLOSURE REQUIREMENTS

#### *Right to issue restrictions notice*

- 1 (1) This paragraph applies if—
- (a) a notice under section 790D or 790E is served by a company on a person who has a relevant interest in the company, and
  - (b) the person fails to comply with that notice within the time specified in it.
- (2) The company may give the person a notice under this paragraph (a “warning notice”) informing the person that it is proposing to issue the person with a notice (a “restrictions notice”) with respect to the relevant interest.
- (3) The company may issue the restrictions notice if, by the end of the period of one month beginning with the date on which the warning notice was given—
- (a) the person has not complied with the notice served under section 790D or 790E, and
  - (b) the company has not been provided with a valid reason sufficient to justify the person's failure to comply with the notice served under that section.
- (4) A restrictions notice is issued on a person by sending the notice to the person.

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- (5) The effect of a restrictions notice is set out in paragraph 3.
- (6) In deciding whether to issue a restrictions notice, the company must have regard to the effect of the notice on the rights of third parties in respect of the relevant interest.

#### *Relevant interests*

- 2 (1) For the purposes of this Schedule, a person has a relevant interest in a company if the person—
  - (a) holds any shares in the company,
  - (b) holds any voting rights in the company, or
  - (c) holds the right to appoint or remove any member of the board of directors of the company.
- (2) References to “the relevant interest” are to the shares or right in question.
- (3) Part 3 of Schedule 1A applies for the interpretation of sub-paragraph (1) save that, where the relevant interest is by virtue of paragraph 19 or 20 of that Schedule treated for the purposes of that Schedule as held by a person other than the person who in fact holds the interest, both the holder and the other person are to be regarded for the purposes of this Schedule as having the relevant interest.

#### *Effect of restrictions notice*

- 3 (1) The effect of a restrictions notice issued under paragraph 1 with respect to a relevant interest is as follows—
  - (a) any transfer of the interest is void,
  - (b) no rights are exercisable in respect of the interest,
  - (c) no shares may be issued in right of the interest or in pursuance of an offer made to the interest-holder,
  - (d) except in a liquidation, no payment may be made of sums due from the company in respect of the interest, whether in respect of capital or otherwise.
- (2) An agreement to transfer an interest that is subject to the restriction in sub-paragraph (1)(a) is void.
- (3) Sub-paragraph (2) does not apply to an agreement to transfer the interest on the making of an order under paragraph 8 made by virtue of sub-paragraph (3)(b) of that paragraph (removal of restrictions in case of court-approved transfer).
- (4) An agreement to transfer any associated right (otherwise than in a liquidation) is void.
- (5) Sub-paragraph (4) does not apply to an agreement to transfer any such right on the making of an order under paragraph 8 made by virtue of sub-paragraph (3)(b) of that paragraph (removal of restrictions in case of court-approved transfer).
- (6) An “associated right”, in relation to a relevant interest, is—



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- (a) a right to be issued with any shares issued in right of the relevant interest, or
  - (b) a right to receive payment of any sums due from the company in respect of the relevant interest.
- (7) The provisions of this section are subject to any directions given under paragraph 4.

#### *Protection of third party rights*

- 4 (1) The court may give a direction under this paragraph if, on application by any person aggrieved, the court is satisfied that a restrictions notice issued by the company under paragraph 1 unfairly affects the rights of third parties in respect of the relevant interest.
- (2) The direction is given for the purpose of protecting those third party rights.
- (3) The direction is a direction that certain acts will not constitute a breach of the restrictions placed on the relevant interest by the restrictions notice.
- (4) An order containing a direction under this paragraph—
- (a) must specify the acts that will not constitute a breach of the restrictions, and
  - (b) may confine the direction to cases where those acts are done by persons, or for purposes, described in the order.
- (5) The direction may be given subject to such terms as the court thinks fit.

#### *Breach of restrictions*

- 5 (1) A person commits an offence if the person does anything listed in subparagraph (2) knowing that the interest is subject to restrictions.
- (2) The things are—
- (a) exercising or purporting to exercise any right to dispose of a relevant interest,
  - (b) exercising or purporting to exercise any right to dispose of any right to be issued with a relevant interest, or
  - (c) voting in respect of a relevant interest (whether as holder of the interest or as proxy) or appointing a proxy to vote in respect of a relevant interest.
- (3) A person who has a relevant interest that the person knows to be subject to restrictions commits an offence if the person—
- (a) knows a person to be entitled (apart from the restrictions) to vote in respect of the interest, whether as holder or as proxy,
  - (b) does not know the person to be aware of the fact that the interest is subject to restrictions, and
  - (c) fails to notify the person of that fact.
- (4) A person commits an offence if the person—
- (a) either has a relevant interest that the person knows to be subject to restrictions or is entitled to an associated right, and

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- (b) enters in that capacity into an agreement that is void by virtue of paragraph 3(2) or (4).
- (5) References in this Schedule to an interest being “subject to restrictions” are to an interest being subject to restrictions by virtue of a restrictions notice under paragraph 1.
- 6 If shares in a company are issued in contravention of a restriction imposed by virtue of a restrictions notice under paragraph 1, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- 7 (1) A person guilty of an offence under paragraph 5 or 6 is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction—
    - (i) in England and Wales, to a fine,
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (2) The provisions of those paragraphs are subject to any direction given under paragraph 4 or 8.

*Relaxation of restrictions*

- 8 (1) An application may be made to the court for an order directing that the relevant interest cease to be subject to restrictions.
- (2) An application for an order under this paragraph may be made by the company in question or by any person aggrieved.
- (3) The court must not make an order under this paragraph unless—
  - (a) it is satisfied that the information required by the notice served under section 790D or 790E has been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or
  - (b) the relevant interest is to be transferred for valuable consideration and the court approves the transfer.
- (4) An order under this paragraph made by virtue of sub-paragraph (3)(b) may continue, in whole or in part, the restrictions mentioned in paragraph 3(1) (c) and (d) so far as they relate to a right acquired or offer made before the transfer.
- (5) Where any restrictions continue in force under sub-paragraph (4)—
  - (a) an application may be made under this paragraph for an order directing that the relevant interest cease to be subject to those restrictions, and
  - (b) sub-paragraph (3) does not apply in relation to the making of such an order.

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### *Orders for sale*

- 9 (1) The court may order that the relevant interest subject to restrictions be sold subject to the court's approval as to the sale.
- (2) An application for an order under sub-paragraph (1) may only be made by the company in question.
- (3) If the court makes an order under this paragraph, it may make such further order relating to the sale or transfer of the interest as it thinks fit.
- (4) An application for an order under sub-paragraph (3) may be made—
- (a) by the company in question,
  - (b) by the person appointed by or in pursuance of the order to effect the sale, or
  - (c) by any person with an interest in the relevant interest.
- (5) On making an order under sub-paragraph (1) or (3), the court may order that the applicant's costs (in Scotland, expenses) be paid out of the proceeds of sale.
- 10 (1) If a relevant interest is sold in pursuance of an order under paragraph 9, the proceeds of the sale, less the costs of the sale, must be paid into court for the benefit of those who are beneficially interested in the relevant interest.
- (2) A person who is beneficially interested in the relevant interest may apply to the court for the whole or part of those proceeds to be paid to that person.
- (3) On such an application, the court must order the payment to the applicant of—
- (a) the whole of the proceeds of sale together with any interest on the proceeds, or
  - (b) if another person was also beneficially interested in the relevant interest at the time of the sale, such proportion of the proceeds (and any interest) as the value of the applicant's interest bears to the total value of the relevant interest.
- (4) If the court has ordered under paragraph 9 that the costs (in Scotland, expenses) of an applicant under that paragraph are to be paid out of the proceeds of sale, the applicant is entitled to payment of those costs (or expenses) out of the proceeds before any person receives any part of the proceeds under this paragraph.

### *Company's power to withdraw restrictions notice*

- 11 A company that issues a person with a restrictions notice under paragraph 1 must by notice withdraw the restrictions notice if—
- (a) it is satisfied that there is a valid reason sufficient to justify the person's failure to comply with the notice served under section 790D or 790E,
  - (b) the notice served under section 790D or 790E is complied with, or
  - (c) it discovers that the rights of a third party in respect of the relevant interest are being unfairly affected by the restrictions notice.

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*Supplementary provision*

- 12 (1) The Secretary of State may by regulations make provision about the procedure to be followed by companies in issuing and withdrawing restrictions notices.
- (2) The regulations may in particular make provision about—
- (a) the form and content of warning notices and restrictions notices, and the manner in which they must be given,
  - (b) the factors to be taken into account in deciding what counts as a “valid reason” sufficient to justify a person's failure to comply with a notice under section 790D or 790E, and
  - (c) the effect of withdrawing a restrictions notice on matters that are pending with respect to the relevant interest when the notice is withdrawn.
- (3) Regulations under this paragraph are subject to negative resolution procedure.

*Offences for failing to comply with notices*

- 13 (1) A person to whom a notice under section 790D or 790E is addressed commits an offence if the person—
- (a) fails to comply with the notice, or
  - (b) in purported compliance with the notice—
    - (i) makes a statement that the person knows to be false in a material particular, or
    - (ii) recklessly makes a statement that is false in a material particular.
- (2) Where the person is a legal entity, an offence is also committed by every officer of the entity who is in default.
- (3) A person does not commit an offence under sub-paragraph (1)(a) (or sub-paragraph (2) as it applies in relation to that sub-paragraph) if the person proves that the requirement to give information was frivolous or vexatious.
- (4) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine (or both);
    - (ii) in Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (iii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).

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### *Offences for failing to provide information*

- 14 (1) A person commits an offence if the person—
- (a) fails to comply with a duty under section 790G or 790H, or
  - (b) in purported compliance with such a duty—
    - (i) makes a statement that the person knows to be false in a material particular, or
    - (ii) recklessly makes a statement that is false in a material particular.
- (2) Where the person is a legal entity, an offence is also committed by every officer of the entity who is in default.
- (3) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine (or both);
    - (ii) in Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (iii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).”

#### **Commencement Information**

**I51** Sch. 3 para. 2 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

**I52** Sch. 3 para. 2 in force at 6.4.2016 in so far as not already in force by S.I. 2015/2029, reg. 4(a)

## **PART 2**

### **RELATED AMENDMENTS**

- 3 The Companies Act 2006 is amended as follows.

#### **Commencement Information**

**I53** Sch. 3 para. 3 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

**I54** Sch. 3 para. 3 in force at 6.4.2016 in so far as not already in force by S.I. 2015/2029, reg. 4(a)

- 4 In section 9 (registration documents), in subsection (4), at the end of paragraph (c) insert “;
- (d) a statement of initial significant control (see section 12A).”

#### **Commencement Information**

**I55** Sch. 3 para. 4 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

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**I56** Sch. 3 para. 4 in force at 30.6.2016 in so far as not already in force by S.I. 2015/2029, reg. 5(b)

5 After section 12 insert—

**“12A Statement of initial significant control**

- (1) The statement of initial significant control required to be delivered to the registrar must—
  - (a) state whether, on incorporation, there will be anyone who will count for the purposes of section 790M (register of people with significant control over a company) as either a registrable person or a registrable relevant legal entity in relation to the company,
  - (b) include the required particulars of anyone who will count as such, and
  - (c) include any other matters that on incorporation will be required (or, in the absence of an election under section 790X, would be required) to be entered in the company's PSC register by virtue of section 790M.
- (2) It is not necessary to include under subsection (1)(b) the date on which someone becomes a registrable person or a registrable relevant legal entity in relation to the company.
- (3) If the statement includes required particulars of an individual, it must also contain a statement that those particulars are included with the knowledge of that individual.
- (4) “Registrable person”, “registrable relevant legal entity” and “required particulars” have the meanings given in Part 21A (see sections 790C and 790K).”

**Commencement Information**

**I57** Sch. 3 para. 5 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

**I58** Sch. 3 para. 5 in force at 30.6.2016 in so far as not already in force by S.I. 2015/2029, reg. 5(b)

6 In section 120 (information as to state of register and index), in subsection (1), for “there were no” substitute “ whether there are ”.

**Commencement Information**

**I59** Sch. 3 para. 6 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

**I60** Sch. 3 para. 6 in force at 6.4.2016 in so far as not already in force by S.I. 2015/2029, reg. 4(a)

7 In section 1068 (registrar's requirements as to form, authentication and manner of delivery), in subsection (6A) (inserted by Schedule 5 to this Act), after “central register)” insert “ or Chapter 4 of Part 21A (option to keep PSC information on central register) ”.

**Commencement Information**

**I61** Sch. 3 para. 7 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

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**I62** Sch. 3 para. 7 in force at 30.6.2016 in so far as not already in force by S.I. 2015/2029, reg. 5(b)

8 In section 1087 (material not available for public inspection), in subsection (1), after paragraph (ba) insert—

“(bb) information to which sections 240 to 244 are applied by section 790ZF(1) (residential addresses of people with significant control over the company) or any corresponding provision of regulations under section 1046 (overseas companies);

(bc) information that, by virtue of regulations under section 790ZG or any corresponding provision of regulations under section 1046, the registrar must omit from the material on the register that is available for inspection;”.

#### Commencement Information

**I63** Sch. 3 para. 8 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

**I64** Sch. 3 para. 8 in force at 6.4.2016 in so far as not already in force by S.I. 2015/2029, reg. 4(a)

9 (1) Section 1126 (consents required for certain prosecutions) is amended as follows.

(2) In subsection (1), at the end insert—

“section 1112 of this Act (general false statement offence);

paragraph 5 or 6 of Schedule 1B to this Act (breach of certain restrictions imposed under that Schedule)”.

(3) In subsection (2)(a)—

(a) omit the “or” at the end of sub-paragraph (ii), and

(b) after sub-paragraph (iii) insert “or

(iv) section 1112 of this Act;”.

(4) In subsection (2)(b), after “section 798 of” insert “ , or paragraph 5 or 6 of Schedule 1B to, ”.

(5) In subsection (3)(a)—

(a) omit the “or” at the end of sub-paragraph (ii), and

(b) after sub-paragraph (iii) insert “or

(iv) section 1112 of this Act;”.

(6) In subsection (3)(b), after “section 798 of” insert “ , or paragraph 5 or 6 of Schedule 1B to, ”.

#### Commencement Information

**I65** Sch. 3 para. 9 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

**I66** Sch. 3 para. 9 in force at 6.4.2016 in so far as not already in force by S.I. 2015/2029, reg. 4(a)

10 In section 1136 (regulations about where certain company records to be kept available for inspection), in subsection (2), after the entry for section 743 insert—

“section 790M (register of people with significant control over a company);  
section 790Z (historic PSC register);”.

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#### Commencement Information

**I67** Sch. 3 para. 10 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

**I68** Sch. 3 para. 10 in force at 6.4.2016 in so far as not already in force by S.I. 2015/2029, reg. 4(a)

11 In Schedule 8 (index of defined expressions), in the appropriate places insert—

“legal entity (in Part 21A) section 790C(5)”,

“PSC register section 790C(10)”,

“registrable person (in Part 21A) section 790C(4)”,

“registrable relevant legal entity (in Part 21A) section 790C(8)”,

“relevant legal entity (in Part 21A) section 790C(6)”,

“significant control (in Part 21A) section 790C(2)”.

#### Commencement Information

**I69** Sch. 3 para. 11 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(a)

**I70** Sch. 3 para. 11 in force at 6.4.2016 in so far as not already in force by S.I. 2015/2029, reg. 4(a)

## SCHEDULE 4

Section 84

### ABOLITION OF SHARE WARRANTS TO BEARER

#### PART 1

##### ARRANGEMENTS FOR CONVERSION AND CANCELLATION OF EXISTING SHARE WARRANTS

##### *Right of surrender during surrender period*

- 1 (1) This paragraph applies in relation to a company which has issued a share warrant which has not been surrendered for cancellation before the day on which section 84 comes into force (the “commencement date”).
- (2) During the period of 9 months beginning with the commencement date (the “surrender period”) the bearer of the share warrant has a right of surrender in relation to the warrant.
- (3) For the purposes of this Schedule, if the bearer of a share warrant has a right of surrender in relation to the warrant, the bearer is entitled on surrendering the warrant for cancellation—



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- (a) to have the bearer's name entered as a member in the register of members of the company concerned, or
    - (b) where an election is in force under section 128B of the Companies Act 2006 (option to keep membership information on central register) in respect of the company, to have the bearer's name and other particulars delivered to the registrar, and the document containing that information registered by the registrar and the date recorded, as if the information were information required to be delivered under section 128E of that Act.
  - (4) A company must, as soon as reasonably practicable and in any event before the end of the period of 2 months beginning with the day on which a share warrant is surrendered for cancellation pursuant to a right of surrender, complete and have ready for delivery the certificates of the shares specified in the warrant.
  - (5) If a company fails to comply with sub-paragraph (4) an offence is committed by every officer of the company who is in default.
- 2 (1) A company must, as soon as reasonably practicable and in any event before the end of the period of 1 month beginning with the commencement date, give notice to the bearer of a share warrant issued by the company of—
  - (a) the bearer's right of surrender,
  - (b) the consequences of not exercising that right before the end of the period of 7 months beginning with the commencement date (see paragraph 3),
  - (c) the fact that the right will cease to be exercisable at the end of the surrender period, and
  - (d) the consequences of not exercising the right before the end of that period (see in particular paragraphs 5, 6 and 9 to 12).
- (2) If a company fails to comply with this paragraph an offence is committed by every officer of the company who is in default.

*Consequences of failure to surrender during first 7 months of surrender period*

- 3 (1) This paragraph applies in relation to a share warrant of a company which has not been surrendered by the bearer for cancellation before the end of the period of 7 months beginning with the commencement date.
- (2) Any transfer of, or agreement to transfer, the share warrant made after the end of that period is void.
- (3) With effect from the end of that period, all rights which are attached to the shares specified in the warrant are suspended (including any voting rights and any right to receive a dividend or other distribution).
- (4) The company must pay into a separate bank account that complies with sub-paragraph (5) any dividend or other distribution which the bearer of the share warrant would, but for the suspension, have been entitled to receive.
- (5) A bank account complies with this sub-paragraph if the balance of the account—
  - (a) bears interest at an appropriate rate, and
  - (b) can be withdrawn by such notice (if any) as is appropriate.
- (6) If the share warrant is subsequently surrendered in accordance with this Schedule—
  - (a) the suspension ceases to have effect on surrender, and

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- (b) the suspension period amount must be paid to the bearer by the company.
- (7) The “suspension period amount”, in relation to a share warrant, is—
  - (a) the aggregate amount of any dividends or other distributions which the bearer of the warrant would, but for the suspension, have been entitled to receive, plus
  - (b) any interest accrued on that amount.

*Second notice of right to surrender*

- 4 (1) A company must, before the end of the period of 8 months beginning with the commencement date, give further notice to the bearer of a share warrant of the company of—
  - (a) the bearer's right of surrender,
  - (b) the consequences of not having exercised the right of surrender before the end of the period of 7 months beginning with the commencement date (see paragraph 3), and
  - (c) the matters referred to in paragraph 2(1)(c) and (d).
- (2) If a company fails to comply with this paragraph an offence is committed by every officer of the company who is in default.

*Expiry of right to surrender and applications for cancellation of outstanding share warrants*

- 5 (1) This paragraph applies in relation to a company which has issued a share warrant which has not been surrendered for cancellation before the end of the surrender period.
- (2) The company must, as soon as reasonably practicable and in any event before the end of the period of 3 months beginning with the day after the end of the surrender period, apply to the court for an order (referred to in this Schedule as a “cancellation order”) cancelling with effect from the date of the order—
  - (a) the share warrant, and
  - (b) the shares specified in it.
- (3) The company must give notice to the bearer of the share warrant of the fact that an application has been made under this paragraph before the end of the period of 14 days beginning with the day on which it is made; and the notice must include a copy of the application.
- (4) If a company fails to comply with sub-paragraph (2) or (3) an offence is committed by every officer of the company who is in default.
- (5) A company must, on making an application for a cancellation order, immediately give notice to the registrar.
- (6) If a company fails to comply with sub-paragraph (5) an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

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### *Cancellation orders and suspended cancellation orders*

- 6 (1) The court must make a cancellation order in respect of a share warrant if, on an application under paragraph 5, it is satisfied that—
- (a) the company has given notice to the bearer of the share warrant as required by paragraphs 2 and 4, or
  - (b) the bearer had actual notice by other means of the matters mentioned in paragraph 2(1).
- (2) If, on such an application, the court is not so satisfied, it must instead make a suspended cancellation order in respect of the share warrant.
- (3) A “suspended cancellation order” is an order—
- (a) requiring the company to give notice to the bearer of the share warrant containing the information set out in sub-paragraph (4) before the end of the period of 5 working days beginning with the day the order is made,
  - (b) providing that the bearer of the share warrant has a right of surrender during the period of 2 months beginning with the day the order is made (referred to in this Schedule as “the grace period”), and
  - (c) if the share warrant is not so surrendered, cancelling it and the shares specified in it with effect from the end of the grace period.
- (4) A notice required to be given by a suspended cancellation order must—
- (a) inform the bearer of the share warrant of the fact that the bearer has a right of surrender during the grace period,
  - (b) inform the bearer of the consequences of not having exercised that right before the end of the period of 7 months beginning with the commencement date (see paragraph 3), and
  - (c) explain that the share warrant will be cancelled with effect from the end of the grace period if it is not surrendered before then.
- (5) Where a share warrant is cancelled by an order under this paragraph, the company concerned must, as soon as reasonably practicable—
- (a) enter the cancellation date in its register of members, or
  - (b) where an election is in force under section 128B of the Companies Act 2006 (option to keep membership information on central register) in respect of the company, deliver that information to the registrar as if it were information required to be delivered under section 128E of that Act.
- (6) In this Schedule “the cancellation date”, in relation to a share warrant, means the day its cancellation by a cancellation order or suspended cancellation order takes effect.

### *Registration of reduction of share capital*

- 7 (1) This paragraph applies in relation to a company if a share warrant of the company and the shares specified in it are cancelled by a cancellation order or a suspended cancellation order.
- (2) The company must, before the end of the period of 15 days beginning with the cancellation date, deliver to the registrar—
- (a) a copy of the order,

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- (b) in the case of a suspended cancellation order, a statement confirming that the share warrant and the shares specified in it have been cancelled by the order with effect from the cancellation date, and
  - (c) a statement of capital.
- (3) The statement of capital must state with respect to the company's share capital as reduced by the cancellation of the share warrant and the shares specified in it—
- (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and
  - (d) for each class of shares—
    - (i) such particulars of the rights attached to the shares as are prescribed by the Secretary of State under section 644(2)(c)(i) of the Companies Act 2006,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class.
- (4) If the company fails to comply with this paragraph an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (5) In the case of a public company, a statement of capital delivered under this paragraph is to be treated as a document subject to the Directive disclosure requirements for the purposes of the Companies Act 2006 (see section 1078 of that Act).

*Reduction of share capital below authorised minimum in case of public company*

- 8 (1) This paragraph applies where the court makes a cancellation order or a suspended cancellation order in relation to a public company and—
- (a) in the case of a cancellation order, the order has the effect of bringing the nominal value of its allotted share capital below the authorised minimum, or
  - (b) in the case of a suspended cancellation order, the order may have that effect from the end of the grace period.
- (2) The registrar must not register the cancellation order or (as the case may be) the suspended cancellation order if it has that effect from the end of the grace period unless—
- (a) the court so directs in the order concerned, or
  - (b) the company is first re-registered as a private company.
- (3) The expedited procedure for re-registration provided by section 651 of the Companies Act 2006 applies for the purposes of this paragraph as it applies for the purposes of section 650 of that Act.
- (4) Where the court makes an order under section 651 of that Act in connection with a suspended cancellation order, the order under section 651 must be conditional on the suspended cancellation order having the effect mentioned in sub-paragraph (1)
- (b) from the end of the grace period.

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*Payment into court in connection with cancellation*

- 9 (1) Where a share warrant is cancelled by a cancellation order or suspended cancellation order, the company concerned must, before the end of the period of 14 days beginning with the cancellation date, make a payment into court of an amount equal to—
- (a) the aggregate nominal value of the shares specified in the warrant and the whole of any premium paid on them, plus
  - (b) the suspension period amount.
- (2) If a company fails to comply with sub-paragraph (1) an offence is committed by every officer of the company who is in default.
- 10 (1) A person who, at the end of the period of 7 months beginning with the commencement date, was the bearer of a share warrant which has been cancelled by a cancellation order or a suspended cancellation order may apply to the court for the sum paid into court under paragraph 9(1) in respect of the shares specified in the warrant to be paid to that person.
- (2) Such an application may only be made during the period—
- (a) beginning with the day which is 6 months after the cancellation date, and
  - (b) ending with the day which is 3 years after the cancellation date.
- (3) The court may grant an application under sub-paragraph (1) only if it is satisfied that there are exceptional circumstances justifying the failure of the bearer of the share warrant to exercise the right of surrender—
- (a) in the case of a warrant cancelled by a cancellation order, before the end of the surrender period, or
  - (b) in the case of a warrant cancelled by a suspended cancellation order, before the end of the grace period.
- 11 (1) This paragraph applies in relation to a company in respect of which a cancellation order or suspended cancellation order has been made if any of the following is appointed in relation to the company after the cancellation date—
- (a) an administrator;
  - (b) an administrative receiver;
  - (c) a liquidator;
- and that person is referred to in this paragraph as the “office-holder”.
- (2) The office-holder may apply to the court for the sum paid into court under paragraph 9(1)(a) to be paid to the office-holder by way of a contribution to the company's assets.
- (3) Such an application may only be made during the period—
- (a) beginning with the cancellation date, and
  - (b) ending with the day which is 3 years after that date.
- 12 (1) Anything left of a sum paid into court under paragraph 9(1) immediately after the end of the period mentioned in paragraph 11(3) must be paid into the Consolidated Fund.
- (2) Sub-paragraph (1) does not apply to any amount in respect of which an application under paragraph 10(1) or 11(2) has been made but not yet determined before the end of that period unless and until the application is dismissed and either—
- (a) the period for bringing an appeal against the dismissal has expired, or

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- (b) in a case where an appeal is brought before the end of that period, the appeal is dismissed, abandoned or otherwise ceases to have effect.

*Company with outstanding share warrants: prohibition on striking off*

- 13 (1) An application under section 1003 of the Companies Act 2006 (application for voluntary striking off) on behalf of a company must not be made at a time when there is a share warrant issued by the company.
- (2) It is an offence for a person to make an application in contravention of this section.
- (3) In proceedings for such an offence it is a defence for the accused to prove that the accused did not know, and could not reasonably have known, of the existence of the share warrant.

*Notices*

- 14 (1) A notice required by virtue of any provision of this Schedule to be given to the bearer of a share warrant must be—
- (a) published in the Gazette,
- (b) communicated to that person in the same way (if any) as the company concerned normally communicates with that person for other purposes relating to the shares specified in the warrant, and
- (c) made available in a prominent position on the company's website (if it has one) during the period mentioned in sub-paragraph (2) (and see sub-paragraph (3)).
- (2) That period is the period beginning with the day on which the notice is published in the Gazette and ending with—
- (a) in the case of a notice required by paragraph 2, the day on which a notice required by paragraph 4 is made available on the company's website;
- (b) in the case of a notice required by paragraph 4, the day on which a notice required by paragraph 5(3) is made available on the company's website;
- (c) in the case of a notice required by paragraph 5(3), the day on which the court makes a cancellation order or (as the case may be) suspended cancellation order in respect of the share warrant;
- (d) in the case of a notice required by virtue of paragraph 6(3)(a), the end of the grace period.
- (3) Nothing in this paragraph requires a notice to be made available on the company's website after the day on which the last of the share warrants issued by the company to be surrendered is surrendered.
- (4) Sections 1143 to 1148 of the Companies Act 2006 (company communications provisions) apply for the purposes of this Part of this Schedule as they apply for the purposes of the Companies Acts.

*Company filings: language requirements*

- 15 Sections 1103, 1104 and 1107 of the Companies Act 2006 (language requirements) apply to all documents required to be delivered to the registrar under this Part of this Schedule.

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### *Application of sections 1112 and 1113 of the Companies Act 2006*

- 16 Sections 1112 (general false statement offence) and 1113 (enforcement of company's filing obligations) of the Companies Act 2006 apply for the purposes of this Part of this Schedule as they apply for the purposes of the Companies Acts.

### *Offences*

- 17 For the purposes of any offence under this Part of this Schedule a shadow director is treated as an officer of the company.
- 18 (1) A person guilty of an offence under paragraph 1(5) of this Schedule is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (2) A person guilty of an offence under any other provision of this Schedule is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction—
    - (i) in England and Wales, to a fine;
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- 19 The following sections of the Companies Act 2006 apply for the purposes of this Part of this Schedule as they apply for the purposes of the Companies Acts—
- (a) sections 1121 and 1122 (liability of officer in default);
  - (b) section 1125 (meaning of “daily default fine”);
  - (c) sections 1127 and 1128 (general provision about summary proceedings);
  - (d) section 1129 (legal professional privilege);
  - (e) section 1132 (production and inspection of documents).

### *Interpretation*

- 20 (1) In this Part of this Schedule—
- “cancellation date” has the meaning given by paragraph 6(6);
  - “cancellation order” has the meaning given by paragraph 5(2);
  - “commencement date” has the meaning given by paragraph 1(1);
  - “Companies Acts” has the same meaning as in the Companies Act 2006 (see section 2 of that Act);
  - “grace period” has the meaning given by paragraph 6(3)(b);
  - “surrender period” has the meaning given by paragraph 1(2);
  - “suspended cancellation order” has the meaning given by paragraph 6(3);
  - “suspension period amount” has the meaning given by paragraph 3(7);
  - “right of surrender” has the meaning given by paragraph 1(3).
- (2) Expressions defined for the purposes of the Companies Acts have the same meaning in this Part of this Schedule as in those Acts.

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### *Transitory provision*

- 21 (1) Until section 94 (option to keep information on central register) comes into force, this Schedule has effect as if, in each of paragraphs 1(3) and 6(5), paragraph (b) (and the “or” preceding it) were omitted.
- (2) Until section 97 (contents of statements of capital) comes into force, paragraph 7(3) of this Schedule has effect as if—
- (a) paragraph (c) were omitted, and
  - (b) after paragraph (d) there were inserted “, and
  - (e) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”

## **PART 2**

### CONSEQUENTIAL AMENDMENTS

- 22 The Companies Act 2006 is amended as follows.
- 23 In section 122 (share warrants)—
- (a) for subsections (1) and (2) substitute—
    - “(1) Until a share warrant issued by a company is surrendered the following are deemed to be the particulars required to be entered in the register of members in respect of the warrant—
    - (a) the fact of the issue of the warrant,
    - (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number, and
    - (c) the date of the issue of the warrant.”, and
    - (b) omit subsection (4).
- 24 In section 617 (alteration of share capital of limited company), in subsection (5), after paragraph (e) insert—
- “(f) the cancellation of a share warrant issued by the company and of the shares specified in it by a cancellation order or suspended cancellation order made under paragraph 6 of Schedule 4 to the Small Business, Enterprise and Employment Act 2015 (cancellation where share warrants not surrendered in accordance with that Schedule);
  - (g) the cancellation of a share warrant issued by the company and of the shares specified in it pursuant to section 1028A(2) or 1032A(2) (cancellation of share warrants on restoration of a company).”
- 25 In section 652 (liability of members following reduction of capital), in subsection (1)(a), for “or 649” substitute “, 649, 1028A or 1032A of this Act or paragraph 7 of Schedule 4 to the Small Business, Enterprise and Employment Act 2015”.
- 26 (1) Omit section 780 (duty of company as to issue of share certificates on surrender of share warrant).



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- (2) The repeal of section 780 has no effect in relation to a share warrant surrendered for cancellation before the day on which section 84 comes into force.

27 (1) After section 1028 insert—

**“1028A Administrative restoration of company with share warrants**

- (1) This section applies in relation to a company which has been struck off the register under section 1000 or 1001 and which, at the time it was struck off, had any share warrant in issue.
- (2) If the registrar restores the company to the register under section 1025, the share warrant and the shares specified in it are cancelled with effect from the date the restoration takes effect.
- (3) If as a result of subsection (2) the company has no issued share capital, the company must, before the end of the period of one month beginning with the date the restoration takes effect, allot at least one share in the company; and section 549(1) does not apply to such an allotment.
- (4) The company must, before the end of the period of 15 days beginning with the date the restoration takes effect, deliver a statement of capital to the registrar.
- (5) Subsection (4) does not apply in a case where the company is required under subsection (3) to make an allotment (because in such a case section 555 will apply).
- (6) The statement of capital must state with respect to the company's share capital as reduced by the cancellation of the share warrant and the shares specified in it—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and
  - (d) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class.
- (7) Where a share warrant is cancelled in accordance with subsection (2), the company must, as soon as reasonably practicable—
  - (a) enter the date the cancellation takes effect in its register of members, or
  - (b) where an election is in force under section 128B of the Companies Act 2006 (option to keep membership information on central register) in respect of the company, deliver that information to the registrar as if it were information required to be delivered under section 128E of that Act.
- (8) Subsection (9) applies where—

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- (a) any property or right previously vested in or held on trust for the company in respect of any share specified in a share warrant has vested as *bona vacantia* (see section 1012), and
  - (b) the warrant and the share are cancelled on the restoration of the company in accordance with this section.
- (9) On restoration of the company, that property or right—
- (a) may not be returned to the company, and
  - (b) accordingly, remains vested as *bona vacantia*.
- (10) If default is made in complying with subsection (3) or (4), an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (11) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction—
    - (i) in England and Wales, to a fine;
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.”
- (2) Until section 97 (contents of statements of capital) comes into force, the section 1028A inserted by sub-paragraph (1) has effect as if in subsection (6)—
- (a) paragraph (c) were omitted, and
  - (b) after paragraph (d) there were inserted “, and
    - (e) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”
- (3) Until section 94 (option to keep information on central register) comes into force, the section 1028A inserted by sub-paragraph (1) has effect as if, in subsection (7), paragraph (b) (and the “or” preceding it) were omitted.

- 28 (1) After section 1032A insert—

**“1032A Restoration by court of company with share warrants**

- (1) This section applies in relation to a company falling within section 1029(1) if, at the time it was dissolved, deemed to be dissolved or (as the case may be) struck off, it had any share warrant in issue.
- (2) If the court orders the restoration of the company to the register, the order must also cancel the share warrant and the shares specified in it with effect from the date the restoration takes effect.
- (3) If as a result of subsection (2) the company has no issued share capital, the company must, before the end of the period of one month beginning with the date the restoration takes effect, allot at least one share in the company; and section 549(1) does not apply to such an allotment.
- (4) Subsection (6) applies in a case where—

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- (a) the application under section 1029 was made by a person mentioned in subsection (2)(b) or (h) of that section, or
  - (b) the court order specifies that it applies.
- (5) But subsection (6) does not apply in any case where the company is required under subsection (3) to make an allotment (because in such a case section 555 will apply).
- (6) In a case where this subsection applies, the company must, before the end of the period of 15 days beginning with the date the restoration takes effect, deliver a statement of capital to the registrar.
- (7) The statement of capital must state with respect to the company's share capital as reduced by the cancellation of the share warrant and the shares specified in it—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and
  - (d) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class.
- (8) Where a share warrant is cancelled by an order as mentioned in subsection (2), the company must, as soon as reasonably practicable—
  - (a) enter the date the cancellation takes effect in its register of members, or
  - (b) where an election is in force under section 128B of the Companies Act 2006 (option to keep membership information on central register) in respect of the company, deliver that information to the registrar as if it were information required to be delivered under section 128E of that Act.
- (9) Subsection (10) applies where—
  - (a) any property or right previously vested in or held on trust for the company in respect of any share specified in a share warrant has vested as *bona vacantia* (see section 1012), and
  - (b) the warrant and the share are cancelled on the restoration of the company in accordance with this section.
- (10) On restoration of the company, that property or right—
  - (a) may not be returned to the company, and
  - (b) accordingly, remains vested as *bona vacantia*.
- (11) If default is made in complying with subsection (3) or (6), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (12) A person guilty of an offence under this section is liable—

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- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction—
    - (i) in England and Wales, to a fine;
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.”
- (2) Until section 97 (contents of statements of capital) comes into force, the section 1032A inserted by sub-paragraph (1) has effect as if in subsection (7)—
- (a) paragraph (c) were omitted, and
  - (b) after paragraph (d) there were inserted “, and
  - (e) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).”
- (3) Until section 94 (option to keep information on central register) comes into force, the section 1032A inserted by sub-paragraph (1) has effect as if, in subsection (8), paragraph (b) (and the “or” preceding it) were omitted.

## SCHEDULE 5

Section 94

### OPTION TO KEEP INFORMATION ON CENTRAL REGISTER

#### PART 1

##### CREATION OF THE OPTION

###### *Register of members*

1 Part 8 of the Companies Act 2006 (a company's members) is amended as follows.

**Commencement Information**

**I71** Sch. 5 para. 1 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

2 In Chapter 2 (register of members), before section 113 insert—

**Alternative method of record-keeping**

“112A This Chapter must be read with Chapter 2A (which allows for an alternative method of record-keeping in the case of private companies).”

**Commencement Information**

**I72** Sch. 5 para. 2 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

3 After Chapter 2 insert—

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## “CHAPTER 2A

### OPTION TO KEEP INFORMATION ON CENTRAL REGISTER

#### Introduction

128A) This Chapter sets out rules allowing private companies to keep information on the register kept by the registrar instead of entering it in their register of members.

(2) The register kept by the registrar (see section 1080) is referred to in this Chapter as “the central register”.

#### Right to make an election

128B) An election may be made under this section—

- (a) by the subscribers wishing to form a private company under this Act, or
- (b) by the private company itself once it is formed and registered.

(2) In the latter case, the election is of no effect unless, before it is made—

- (a) all the members of the company have assented to the making of the election, and
- (b) any overseas branch registers that the company was keeping under Chapter 3 have been discontinued and all the entries in those registers transferred to the company's register of members in accordance with section 135.

(3) An election under this section is made by giving notice of election to the registrar.

(4) If the notice is given by subscribers wishing to form a private company—

- (a) it must be given when the documents required to be delivered under section 9 are delivered to the registrar, and
- (b) it must be accompanied by a statement containing all the information that—
  - (i) would be required (in the absence of the notice) to be entered in the company's register of members on incorporation of the company, and
  - (ii) is not otherwise included in the documents delivered under section 9.

(5) If the notice is given by the company, it must be accompanied by—

- (a) a statement by the company—
  - (i) that all the members of the company have assented to the making of the election, and
  - (ii) if the company was keeping any overseas branch registers, that all such registers have been discontinued and all the entries in them transferred to the company's register of members in accordance with section 135, and

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- (b) a statement containing all the information that is required to be contained in the company's register of members as at the date of the notice in respect of matters that are current as at that date.
- (6) The company must where necessary update the statement sent under subsection (5)(b) to ensure that the final version delivered to the registrar contains all the information that is required to be contained in the company's register of members as at the time immediately before the election takes effect (see section 128C) in respect of matters that are current as at that time.
  - (7) The obligation in subsection (6) to update the statement includes an obligation to rectify it (where necessary) in consequence of the company's register of members being rectified (whether before or after the election takes effect).
  - (8) If default is made in complying with subsection (6), an offence is committed by—
    - (a) the company, and
    - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.
  - (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
  - (10) A reference in this Chapter to matters that are current as at a given date or time is a reference to—
    - (a) persons who are members of the company as at that date or time, and
    - (b) any other matters that are current as at that date or time.

### **Effective date of election**

- 128(1) An election made under section 128B takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
    - (a) the company ceases to be a private company, or
    - (b) a notice of withdrawal sent by the company under section 128J is registered by the registrar,
 whichever occurs first.

### **Effect of election on obligations under Chapter 2**

- 128(1) The effect of an election under section 128B on a company's obligations under Chapter 2 is as follows.
- (2) The company's obligation to maintain a register of members does not apply with respect to the period when the election is in force.
  - (3) This means that, during that period—
    - (a) the company must continue to keep a register of members in accordance with Chapter 2 (a “historic” register) containing all the

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- information that was required to be stated in that register as at the time immediately before the election took effect, but
- (b) the company does not have to update that register to reflect any changes that occur after that time.
- (4) Subsections (2) and (3) apply to the index of members (if the company is obliged to keep an index of members) as they apply to the register of members.
  - (5) The provisions of Chapter 2 (including the rights to inspect or require copies of the register and to inspect the index) continue to apply to the historic register and, if applicable, the historic index during the period when the election is in force.
  - (6) The company must place a note in its historic register—
    - (a) stating that an election under section 128B is in force,
    - (b) recording when that election took effect, and
    - (c) indicating that up-to-date information about its members is available for public inspection on the central register.
  - (7) Subsections (7) and (8) of section 113 apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.
  - (8) The obligations under this section with respect to a historic register and historic index do not apply in a case where the election was made by subscribers wishing to form a private company.

### **Duty to notify registrar of changes**

- 128E) The duty under subsection (2) applies during the period when an election under section 128B is in force.
- (2) The company must deliver to the registrar any relevant information that the company would during that period have been obliged under this Act to enter in its register of members, had the election not been in force.
  - (3) “Relevant information” means information other than—
    - (a) the date mentioned in section 113(2)(b) (date when person registered as member),
    - (b) the date mentioned in section 123(3)(b) (date when membership of limited company increases from one to two or more members), and
    - (c) the dates mentioned in the following provisions, but only in cases where the date to be recorded in the central register is to be the date on which the document containing information of the relevant change is registered by the registrar—
      - (i) section 113(2)(c) (date when person ceases to be member),
      - (ii) section 123(2)(b) (date when company becomes single member company).
  - (4) The relevant information must be delivered as soon as reasonably practicable after the company becomes aware of it and, in any event, no later than the time by which the company would have been required to enter the information in its register of members.

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- (5) In a case of the kind described in subsection (3)(c), the company must, when it delivers information under subsection (2) of the relevant change, indicate to the registrar that, in accordance with section 1081(1A), the date to be recorded in the central register is to be the date on which the document containing that information is registered by the registrar.
- (6) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **Information as to state of central register**

- 128(F) When a person inspects or requests a copy of material on the central register relating to a company in respect of which an election under section 128B is in force, the person may ask the company to confirm that all information that the company is required to deliver to the registrar under this Chapter has been delivered.
- (2) If a company fails to respond to a request under subsection (1), an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Power of court to order company to remedy default or delay**

- 128(G) This section applies if—
  - (a) the name of a person is without sufficient cause included in, or omitted from, information that a company delivers to the registrar under this Chapter concerning its members, or
  - (b) default is made or unnecessary delay takes place in informing the registrar under this Chapter of—
    - (i) the name of a person who is to be a member of the company, or
    - (ii) the fact that a person has ceased or is to cease to be a member of the company.
- (2) The person aggrieved, or any member of the company, or the company, may apply to the court for an order—
  - (a) requiring the company to deliver to the registrar the information (or statements) necessary to rectify the position, and



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- (b) where applicable, requiring the registrar to record under section 1081(1A) the date determined by the court.
- (3) The court may either refuse the application or may make the order and order the company to pay any damages sustained by any party aggrieved.
- (4) On such an application the court may decide—
  - (a) any question relating to the title of a person who is a party to the application to have the person's name included in or omitted from information delivered to the registrar under this Chapter about the company's members, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and
  - (b) any question necessary or expedient to be decided for rectifying the position.
- (5) Nothing in this section affects a person's rights under section 1095 or 1096 (rectification of register on application to registrar or under court order).

#### **Central register to be evidence**

- 128H) The central register is prima facie evidence of any matters about which a company is required to deliver information to the registrar under this Chapter.
- (2) Subsection (1) does not apply to information to be included in a statement under section 128B(5)(b) or in any updated statement under section 128B(6).

#### **Time limits for claims arising from delivery to registrar**

- 128I) Liability incurred by a company—
  - (a) from the delivery to the registrar of information under this Chapter, or
  - (b) from a failure to deliver any such information,is not enforceable more than 10 years after the date on which the information was delivered or, as the case may be, the failure first occurred.
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).

#### **Withdrawing the election**

- 128J) A company may withdraw an election made by or in respect of it under section 128B.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
- (3) The withdrawal takes effect when the notice is registered by the registrar.
- (4) The effect of withdrawal is that the company's obligation under Chapter 2 to maintain a register of members applies from then on with respect to the period going forward.
- (5) This means that, when the withdrawal takes effect—

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- (a) the company must enter in its register of members all the information that is required to be contained in that register in respect of matters that are current as at that time,
  - (b) the company must also retain in its register all the information that it was required under section 128D(3)(a) to keep in a historic register while the election was in force, but
  - (c) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.
- (6) The company must place a note in its register of members—
- (a) stating that the election under section 128B has been withdrawn,
  - (b) recording when that withdrawal took effect, and
  - (c) indicating that information about its members relating to the period when the election was in force that is no longer current is available for public inspection on the central register.
- (7) Subsections (7) and (8) of section 113 apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.

#### **Power to extend option to public companies**

128K(1) The Secretary of State may by regulations amend this Act—

- (a) to extend sections 128A to 128J (with or without modification) to public companies or public companies of a class specified in the regulations, and
  - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

#### **Commencement Information**

**I73** Sch. 5 para. 3 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

#### *Register of overseas members*

4 In Chapter 3 of Part 8 of the Companies Act 2006 (overseas branch registers), in section 129 (overseas branch registers), at the end insert—

“(6) A company's right under subsection (1) to keep an overseas branch register does not apply during or with respect to any period when an election is in force in respect of the company under section 128B.”

#### **Commencement Information**

**I74** Sch. 5 para. 4 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

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*Register of directors and register of directors' residential addresses*

- 5 Chapter 1 of Part 10 of the Companies Act 2006 (appointment and removal of directors) is amended as follows.

**Commencement Information**

**I75** Sch. 5 para. 5 in force at 30.6.2016 by [S.I. 2016/321](#), **reg. 6(c)**

- 6 Under the heading “*Register of directors, etc*”, before section 162 insert—

**Alternative method of record-keeping**

“161A Sections 162 to 167 must be read with sections 167A to 167E (which allow for an alternative method of record-keeping in the case of private companies).”

**Commencement Information**

**I76** Sch. 5 para. 6 in force at 30.6.2016 by [S.I. 2016/321](#), **reg. 6(c)**

- 7 After section 167 insert—

*“Option to keep information on the central register*

**167A Right to make an election**

- (1) An election may be made under this section in respect of a register of directors or a register of directors' residential addresses (or both).
- (2) The election may be made—
  - (a) by the subscribers wishing to form a private company under this Act, or
  - (b) by the private company itself once it is formed and registered.
- (3) The election is made by giving notice of election to the registrar.
- (4) If the notice is given by subscribers wishing to form a private company, it must be given when the documents required to be delivered under section 9 are delivered to the registrar.

**167B Effective date of election**

- (1) An election made under section 167A takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
  - (a) the company ceases to be a private company, or
  - (b) a notice of withdrawal sent by the company under section 167E is registered by the registrar,whichever occurs first.

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### **167C Effect of election on obligations under sections 162 to 167**

- (1) If an election is in force under section 167A with respect to a company, the company's obligations under sections 162 to 167—
  - (a) to keep and maintain a register of the relevant kind, and
  - (b) to notify the registrar of changes to it,do not apply with respect to the period when the election is in force.
- (2) The reference in subsection (1) to a register “of the relevant kind” is to a register (whether a register of directors or a register of directors' residential addresses) of the kind in respect of which the election is made.

### **167D Duty to notify registrar of changes**

- (1) The duty under subsection (2) applies during the period when an election under section 167A is in force.
- (2) The company must deliver to the registrar—
  - (a) any information of which the company would during that period have been obliged to give notice under section 167, had the election not been in force, and
  - (b) any statement that would have had to accompany such a notice.
- (3) The information (and any accompanying statement) must be delivered as soon as reasonably practicable after the company becomes aware of the information and, in any event, no later than the time by which the company would have been required under section 167 to give notice of the information.
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (5) A person guilty of an offence under this section is liable on summary conviction—
  - (a) in England and Wales, to a fine and, for continued contravention, a daily default fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale;
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

### **167E Withdrawing the election**

- (1) A company may withdraw an election made by or in respect of it under section 167A.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
- (3) The withdrawal takes effect when the notice is registered by the registrar.

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- (4) The effect of withdrawal is that the company's obligation under section 162 or (as the case may be) 165 to keep and maintain a register of the relevant kind, and its obligation under section 167 to notify the registrar of changes to that register, apply from then on with respect to the period going forward.
- (5) This means that, when the withdrawal takes effect—
- (a) the company must enter in that register all the information that is required to be contained in that register in respect of matters that are current as at that time, but
  - (b) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.

### **167F Power to extend option to public companies**

- (1) The Secretary of State may by regulations amend this Act—
- (a) to extend sections 167A to 167E (with or without modification) to public companies or public companies of a class specified in the regulations, and
  - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

#### **Commencement Information**

**I77** Sch. 5 para. 7 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

#### *Register of secretaries*

8 Part 12 of the Companies Act 2006 (company secretaries) is amended as follows.

#### **Commencement Information**

**I78** Sch. 5 para. 8 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

9 After section 274 insert—

#### **“274A Alternative method of record-keeping**

Sections 275 and 276 must be read with sections 279A to 279E (which allow for an alternative method of record-keeping in the case of private companies).”

#### **Commencement Information**

**I79** Sch. 5 para. 9 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

10 After section 279 insert—

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*“Option to keep information on the central register*

**279A Right to make an election**

- (1) An election may be made under this section—
  - (a) by the subscribers wishing to form a private company under this Act, or
  - (b) by the private company itself once it is formed and registered.
- (2) The election is made by giving notice of election to the registrar.
- (3) If the notice is given by subscribers wishing to form a private company, it must be given when the documents required to be delivered under section 9 are delivered to the registrar.

**279B Effective date of election**

- (1) An election made under section 279A takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
  - (a) the company ceases to be a private company, or
  - (b) a notice of withdrawal sent by the company under section 279E is registered by the registrar,whichever occurs first.

**279C Effect of election on obligations under sections 275 and 276**

If an election is in force under section 279A in respect of a company, the company's obligations—

- (a) to keep and maintain a register of secretaries under section 275, and
  - (b) to notify the registrar of changes to it under section 276,
- do not apply with respect to the period when the election is in force.

**279D Duty to notify registrar of changes**

- (1) The duty under subsection (2) applies during the period when an election under section 279A is in force.
- (2) The company must deliver to the registrar—
  - (a) any information of which the company would during that period have been obliged to give notice under section 276, had the election not been in force, and
  - (b) any statement that would have had to accompany such a notice.
- (3) The information (and any accompanying statement) must be delivered as soon as reasonably practicable after the company becomes aware of the information and, in any event, no later than the time by which the company would have been obliged under section 276 to give notice of the information.

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- (4) If default is made in complying with this section, an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (5) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to a fine and, for continued contravention, a daily default fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale;
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

#### **279E Withdrawing the election**

- (1) A company may withdraw an election made by or in respect of it under section 279A.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
- (3) The withdrawal takes effect when the notice is registered by the registrar.
- (4) The effect of withdrawal is that the company's obligation under section 275 to keep and maintain a register of secretaries, and its obligation under section 276 to notify the registrar of changes to that register, apply from then on with respect to the period going forward.
- (5) This means that, when the withdrawal takes effect—
  - (a) the company must enter in its register of secretaries all the information that is required to be contained in that register in respect of matters that are current as at that time, but
  - (b) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.

#### **279F Power to extend option to public companies**

- (1) The Secretary of State may by regulations amend this Act—
  - (a) to extend sections 279A to 279E (with or without modification) to public companies or public companies of a class specified in the regulations, and
  - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

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**Commencement Information**

**I80** Sch. 5 para. 10 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

**PART 2**

RELATED AMENDMENTS

11 The Companies Act 2006 is amended as follows.

**Commencement Information**

**I81** Sch. 5 para. 11 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

12 In section 12 (statement of proposed officers), in subsection (2), after “will be required” insert “ (or, in the absence of an election under section 167A or 279A, would be required) ”.

**Commencement Information**

**I82** Sch. 5 para. 12 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

13 In section 112 (the members of a company), after subsection (2) insert—

“(3) Where an election under section 128B is in force in respect of a company—

(a) the requirement in subsection (1) to enter particulars of members in the company's register of members does not apply, and

(b) subsection (2) has effect as if the reference to a person whose name is entered in the company's register of members were a reference to a person with respect to whom the following steps have been taken—

(i) the person's name has been delivered to the registrar under section 128E, and

(ii) the document containing that information has been registered by the registrar.”

**Commencement Information**

**I83** Sch. 5 para. 13 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

14 In section 127 (register to be evidence), after the words “in it” insert “ , except for any matters of which the central register is prima facie evidence by virtue of section 128H ”.

**Commencement Information**

**I84** Sch. 5 para. 14 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

15 In section 246 (putting the address on the public record)—

(a) after subsection (3) insert—



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“(3A) But—

- (a) subsection (3)(a) does not apply if an election under section 167A is in force in respect of the company's register of directors, and
  - (b) subsection (3)(b) does not apply if an election under section 167A is in force in respect of the company's register of directors' residential addresses.”,
- (b) after subsection (4) insert—
- “(4A) If an election under section 167A is in force in respect of the company's register of directors, the company must, in place of doing the things mentioned in subsection (4)(a) and (b), deliver the particulars to the registrar in accordance with section 167D.”, and
- (c) in subsection (5), for “or (4)” substitute “, (4) or (4A)”.

**Commencement Information**

**I85** Sch. 5 para. 15 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 16 In section 286 (votes of joint holders of shares), in subsection (2), after “register of members” insert “ (or, if an election under section 128B is in force in respect of the company, in the register kept by the registrar under section 1080) ”.

**Commencement Information**

**I86** Sch. 5 para. 16 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 17 In section 311 (contents of notices of meetings), in subsection (3)(b)(i), after “register of members” insert “ (or, if an election under section 128B is in force in respect of the company, by reference to the register kept by the registrar under section 1080) ”.

**Commencement Information**

**I87** Sch. 5 para. 17 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 18 In section 360B (traded companies: requirements for participating in and voting at general meetings), after subsection (4) insert—
- “(5) If an election is in force under section 128B in respect of a company, the reference in subsection (2) to the register of members is to be read as a reference to the register kept by the registrar under section 1080.”

**Commencement Information**

**I88** Sch. 5 para. 18 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 19 In section 554 (registration of allotment), after subsection (2) insert—
- “(2A) If an election is in force under Chapter 2A of Part 8, the obligation under subsection (1) to register the allotment of shares is replaced by an obligation

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to deliver particulars of the allotment of shares to the registrar in accordance with that Chapter.”

**Commencement Information**

**I89** Sch. 5 para. 19 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 20 In section 558 (when shares are allotted), after “members” insert “ (or, as the case may be, to have the person's name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar) ”.

**Commencement Information**

**I90** Sch. 5 para. 20 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 21 In section 588 (liability of subsequent holders of shares), in subsection (3)(a), after “members” insert “ (or, as the case may be, to have his name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar) ”.

**Commencement Information**

**I91** Sch. 5 para. 21 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 22 In section 605 (liability of subsequent holders of shares), in subsection (4)(a), after “members” insert “ (or, as the case may be, to have his name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar) ”.

**Commencement Information**

**I92** Sch. 5 para. 22 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 23 In section 616 (interpretation of Chapter 7), in subsection (3), after “members” insert “ (or, as the case may be, have your name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar) ”.

**Commencement Information**

**I93** Sch. 5 para. 23 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 24 In section 655 (shares no bar to damages against company), after “members” insert “ (or have his name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar) ”.

**Commencement Information**

**I94** Sch. 5 para. 24 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

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- 25 In section 724 (Treasury shares), in subsection (4), after “members” insert “ (or, as the case may be, the company's name must be delivered to the registrar under Chapter 2A of Part 8) ”.

**Commencement Information**

**I95** Sch. 5 para. 25 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 26 In section 770 (registration of transfer), after subsection (2) insert—  
“(3) If an election under Chapter 2A of Part 8 is in force in respect of the company, references in this section to registering a transfer (or a person) are to be read as references to delivering particulars of that transfer (or person) to the registrar under that Chapter.”

**Commencement Information**

**I96** Sch. 5 para. 26 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 27 In section 771 (procedure on transfer being lodged), after subsection (2) insert—  
“(2A) If an election is in force under Chapter 2A of Part 8 in respect of the company, references in this section to registering the transfer are to be read as references to delivering particulars of the transfer to the registrar in accordance with that Chapter.”

**Commencement Information**

**I97** Sch. 5 para. 27 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 28 In section 772 (transfer of shares on application of transferor)—  
(a) after “the name of the transferee” insert “ (or, as the case may be, deliver the name of the transferee to the registrar under Chapter 2A of Part 8) ”, and  
(b) after “entry” insert “ (or delivery) ”.

**Commencement Information**

**I98** Sch. 5 para. 28 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 29 In section 786 (provision enabling or requiring arrangements to be adopted), in subsection (3)(a), after “members” insert “ (or, as the case may be, delivered to the registrar under Chapter 2A of Part 8) ”.

**Commencement Information**

**I99** Sch. 5 para. 29 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

- 30 In section 1068 (registrar's requirements as to form, authentication and manner of delivery), after subsection (6) insert—  
“(6A) But the power conferred by this section does authorise the registrar to require any document permitted or required to be delivered to the registrar under

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Chapter 2A of Part 8 (option to keep membership information on central register) to be delivered by electronic means.”

**Commencement Information**

**I100** Sch. 5 para. 30 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

31 (1) Section 1081 (annotation of the register) is amended as follows.

(2) After subsection (1) insert—

“(1A) If the registrar registers a document delivered by a company under section 128E that, by virtue of subsection (3)(a), (b) or (c) of that section, does not specify the relevant date, the registrar must place a note in the register recording as that date the date on which the document was registered by the registrar.”

(3) In subsection (6), after “(1)” insert “ or (1A) ”.

**Commencement Information**

**I101** Sch. 5 para. 31 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

32 In section 1094 (administrative removal of material from the register), in subsection (3)(a)—

- (a) omit “or” at the end of sub-paragraph (vii),
- (b) insert “, or” at the end of sub-paragraph (viii), and
- (c) after that sub-paragraph insert—

“(ix) a change in its membership particulars of which were delivered to the registrar under section 128E (duty to notify registrar of changes while election to keep information on central register is in force);”.

**Commencement Information**

**I102** Sch. 5 para. 32 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

33 In section 1136 (regulations about where certain company records to be kept available for inspection), in subsection (2), after the entry for section 114 insert—  
 “ section 128D (historic register of members); ”.

**Commencement Information**

**I103** Sch. 5 para. 33 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

34 In Schedule 5 (communications by a company)—

- (a) in paragraph 4 (address for communications in hard copy form), after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) has effect—

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- (a) where an election under section 128B is in force, as if the reference in paragraph (c) to the company's register of members were a reference to the register kept by the registrar under section 1080, and
  - (b) where an election under section 167A is in force in respect of the company's register of directors, as if the reference in paragraph (d) to the company's register of directors were a reference to the register kept by the registrar under section 1080.”, and
- (b) in paragraph 16 (joint holders of shares or debentures), after sub-paragraph (3) insert—
- “(3A) Where an election under section 128B is in force, the reference in sub-paragraph (3)(b) to the register of members is to be read as a reference to the register kept by the registrar under section 1080.”

**Commencement Information**

**I104** Sch. 5 para. 34 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

35 In Schedule 8 (index of defined expressions), in the appropriate place insert—

“the central register

—in Chapter 2A of Part 8

section 128A(2)

—in Chapter 4 of Part 21A

section 790W(2)”.

**Commencement Information**

**I105** Sch. 5 para. 35 in force at 30.6.2016 by S.I. 2016/321, reg. 6(c)

SCHEDULE 6

Section 97

CONTENTS OF STATEMENTS OF CAPITAL

1 The Companies Act 2006 is amended as follows.

**Commencement Information**

**I106** Sch. 6 para. 1 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

2 In section 10 (statement of capital and initial shareholdings), in subsection (2)—

(a) after paragraph (b) insert—

“(ba) the aggregate amount (if any) to be unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and

(b) omit paragraph (d) (and the “and” immediately before it).

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**Commencement Information**

**I107** Sch. 6 para. 2 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 3 In section 32 (constitutional documents to be provided to members), in subsection (2)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I108** Sch. 6 para. 3 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 4 In section 108 (statement of capital required on re-registration as a limited company which already has allotted share capital), in subsection (3)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I109** Sch. 6 para. 4 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 5 In section 555 (return of allotment by limited company), in subsection (4)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I110** Sch. 6 para. 5 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 6 In section 619 (notice to registrar of sub-division or consolidation), in subsection (3)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

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**Commencement Information**

**I111** Sch. 6 para. 6 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 7 In section 621 (notice to registrar of reconversion of stock into shares), in subsection (3)—
- (a) after paragraph (b) insert—
    - “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
  - (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I112** Sch. 6 para. 7 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 8 In section 625 (notice to registrar of redenomination), in subsection (3)—
- (a) after paragraph (b) insert—
    - “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
  - (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I113** Sch. 6 para. 8 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 9 In section 627 (notice to registrar of reduction of capital in connection with redenomination), in subsection (3)—
- (a) after paragraph (b) insert—
    - “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
  - (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I114** Sch. 6 para. 9 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 10 In section 644 (registration of resolution reducing share capital), in subsection (2)—
- (a) after paragraph (b) insert—
    - “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
  - (b) omit paragraph (d) (and the “and” immediately before it).

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**Commencement Information**

**I115** Sch. 6 para. 10 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 11 In section 649 (registration of court order confirming reduction of share capital), in subsection (2)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I116** Sch. 6 para. 11 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 12 In section 663 (notice to registrar of cancellation of shares), in subsection (3)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I117** Sch. 6 para. 12 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 13 In section 689 (notice to registrar of redemption), in subsection (3)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I118** Sch. 6 para. 13 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 14 In section 708 (notice to registrar of cancellation on purchase of own shares), in subsection (3)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).



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**Commencement Information**

**I119** Sch. 6 para. 14 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 15 In section 720B (registration of resolution etc. for purchase of own shares in connection with employees' share scheme), in subsection (2)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I120** Sch. 6 para. 15 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

- 16 In section 730 (notification of cancellation of treasury shares), in subsection (5)—
- (a) after paragraph (b) insert—
- “(ba) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and”, and
- (b) omit paragraph (d) (and the “and” immediately before it).

**Commencement Information**

**I121** Sch. 6 para. 16 in force at 30.6.2016 by S.I. 2016/321, reg. 6(e) (with Sch. para. 11)

SCHEDULE 7

Section 111

SECTIONS 104 TO 110: CONSEQUENTIAL AND RELATED AMENDMENTS

**PART 1**

COMPANY DIRECTORS DISQUALIFICATION ACT 1986

- 1 The Company Directors Disqualification Act 1986 is amended as follows.

**Commencement Information**

**I122** Sch. 7 para. 1 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I123** Sch. 7 para. 1 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 2 In section 1 (disqualification orders: general) in subsection (2), for “section 6” substitute “sections 6 and 8ZA”.

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**Commencement Information**

**I124** Sch. 7 para. 2 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I125** Sch. 7 para. 2 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 3 (1) Section 1A (disqualification undertakings: general) is amended as follows.
- (2) In subsection (1), for “7 and 8” substitute “ 5A, 7, 8, 8ZC and 8ZE ”.
- (3) In subsection (2), after “7” insert “ or 8ZC ”.

**Commencement Information**

**I126** Sch. 7 para. 3 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I127** Sch. 7 para. 3 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 4 (1) Section 2 (disqualification on conviction of indictable offence) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) In subsection (1), “company” includes overseas company.”
- (3) In subsection (2), after paragraph (a) insert—
- “(aa) in relation to an overseas company not falling within paragraph (a), the High Court or, in Scotland, the Court of Session, or”.

**Commencement Information**

**I128** Sch. 7 para. 4 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I129** Sch. 7 para. 4 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 5 (1) Section 3 (disqualification for persistent breaches of companies legislation) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) In this section “company” includes overseas company.”
- (3) In subsection (4)—
- (a) after “means” insert “—
- (a)”,
- and
- (b) after “committed” insert “, or
- (b) in relation to an overseas company not falling within paragraph (a), the High Court or, in Scotland, the Court of Session.”

**Commencement Information**

**I130** Sch. 7 para. 5 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I131** Sch. 7 para. 5 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

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- 6 In section 5 (disqualification on summary conviction), after subsection (4A) insert—

“(4B) In this section “company” includes overseas company.”

**Commencement Information**

**I132** Sch. 7 para. 6 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I133** Sch. 7 para. 6 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 7 In section 6 (duty of court to disqualify unfit directors of insolvent companies), in subsection (2), omit “and the next”.

**Commencement Information**

**I134** Sch. 7 para. 7 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I135** Sch. 7 para. 7 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 8 In section 7 (disqualifications under section 6: applications and undertakings), after subsection (4) insert—

“(5) Subsections (1A) and (2) of section 6 apply for the purposes of this section as they apply for the purposes of that section.”

**Commencement Information**

**I136** Sch. 7 para. 8 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I137** Sch. 7 para. 8 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 9 Before section 8A insert— “ Further provision about disqualification undertakings ”

**Commencement Information**

**I138** Sch. 7 para. 9 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I139** Sch. 7 para. 9 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 10 In section 8A (variation etc of disqualification undertaking), in subsection (3)—

(a) before paragraph (a) insert—

“(za) in the case of an undertaking given under section 8ZC has the same meaning as in section 8ZA;

(zb) in the case of an undertaking given under section 8ZE means the High Court or, in Scotland, the Court of Session;”, and

(b) in paragraph (b), after “section” insert “ 5A(5), ”.

**Commencement Information**

**I140** Sch. 7 para. 10 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I141** Sch. 7 para. 10 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

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- 11 In section 10 (participation in wrongful trading), after subsection (2) insert—  
 “(3) In this section “company” includes overseas company.”

**Commencement Information**

**I142** Sch. 7 para. 11 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I143** Sch. 7 para. 11 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 12 (1) Section 16 (application for disqualification order) is amended as follows.  
 (2) In subsection (1), omit “by the court having jurisdiction to wind up a company”.  
 (3) In subsection (2)—  
 (a) for “with jurisdiction to wind up companies” substitute “, other than a court mentioned in section 2(2)(b) or (c), ”, and  
 (b) after “any company” insert “ or overseas company ”.

**Commencement Information**

**I144** Sch. 7 para. 12 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I145** Sch. 7 para. 12 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 13 (1) Section 17 (application for leave under an order or undertaking) is amended as follows.  
 (2) In subsection (3), after “under section” insert “ 5A, ”.  
 (3) After subsection (3) insert—  
 “(3ZA) Where a person is subject to a disqualification undertaking accepted at any time under section 8ZC, any application for leave for the purposes of section 1A(1)(a) must be made to any court to which, if the Secretary of State had applied for a disqualification order under section 8ZA at that time, that application could have been made.  
 (3ZB) Where a person is subject to a disqualification undertaking accepted at any time under section 8ZE, any application for leave for the purposes of section 1A(1)(a) must be made to the High Court or, in Scotland, the Court of Session.”

**Commencement Information**

**I146** Sch. 7 para. 13 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I147** Sch. 7 para. 13 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 14 In section 18 (register of disqualification orders and undertakings), in subsection (2A)(a), for “7 or 8” substitute “ 5A, 7, 8, 8ZC or 8ZE ”.

**Commencement Information**

**I148** Sch. 7 para. 14 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I149** Sch. 7 para. 14 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

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- 15 In section 20 (admissibility in evidence of statements), in subsection (1), for “6 to 10, 15” substitute “ 5A, 6 to 10, 12C, 15 to 15C ”.

**Commencement Information**

**I150** Sch. 7 para. 15 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I151** Sch. 7 para. 15 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 16 In section 21 (interaction with Insolvency Act 1986), in each of subsections (2) and (3), for “6 to 10, 13, 14, 15” substitute “ 5A, 6 to 10, 12C to 15C ”.

**Commencement Information**

**I152** Sch. 7 para. 16 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I153** Sch. 7 para. 16 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 17 In section 22 (interpretation), after subsection (2) insert—  
“(2A) An “overseas company” is a company incorporated or formed outside Great Britain.”

**Commencement Information**

**I154** Sch. 7 para. 17 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I155** Sch. 7 para. 17 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 18 In section 22A (application of Act to building societies), omit subsection (4).

**Commencement Information**

**I156** Sch. 7 para. 18 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I157** Sch. 7 para. 18 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 19 In section 22B (application of Act to incorporated friendly societies)—  
(a) after subsection (3) insert—  
“(3A) In relation to an incorporated friendly society, this Act applies as if sections 8ZA to 8ZE were omitted.”, and  
(b) omit subsection (4).

**Commencement Information**

**I158** Sch. 7 para. 19 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I159** Sch. 7 para. 19 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

- 20 In section 22C (application of Act to NHS foundation trusts) omit subsection (3).

**Commencement Information**

**I160** Sch. 7 para. 20 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I161** Sch. 7 para. 20 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

*Status: Point in time view as at 25/05/2018.*

*Changes to legislation: Small Business, Enterprise and Employment Act 2015 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

21 Omit section 22D (application of Act to open-ended investment companies).

**Commencement Information**

**I162** Sch. 7 para. 21 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I163** Sch. 7 para. 21 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

22 (1) Section 22E (application of Act to registered societies) is amended as follows.

(2) In subsection (4)—

(a) omit paragraph (c), and

(b) after paragraph (e) insert—

“(f) sections 8ZA to 8ZE are to be disregarded.”

(3) Omit subsection (5).

**Commencement Information**

**I164** Sch. 7 para. 22 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I165** Sch. 7 para. 22 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

23 In section 22F (application of Act to charitable incorporated organisations) omit subsection (4).

**Commencement Information**

**I166** Sch. 7 para. 23 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I167** Sch. 7 para. 23 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

## PART 2

### OTHER ENACTMENTS

#### *Companies (Audit, Investigations and Community Enterprises) Act 2004*

24 Omit paragraph 28 of Schedule 2 to the Companies (Audit, Investigations and Community Enterprises) Act 2004.

**Commencement Information**

**I168** Sch. 7 para. 24 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I169** Sch. 7 para. 24 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

#### *Companies Act 2006*

25 Omit section 1039 of the Companies Act 2006 (disqualification orders consequential amendments).

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#### Commencement Information

**I170** Sch. 7 para. 25 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)

**I171** Sch. 7 para. 25 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(g)

## SCHEDULE 8

Section 112

### NORTHERN IRELAND: PROVISION CORRESPONDING TO SECTIONS 104 TO 111

#### *The Company Directors Disqualification (Northern Ireland) Order 2002*

- 1 In this Schedule “the 2002 Order” means the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)).

#### Commencement Information

**I172** Sch. 8 para. 1 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

#### *Convictions abroad*

- 2 (1) After Article 8 of the 2002 Order insert—

#### **Disqualification for certain convictions abroad**

“8A (1) If it appears to the Department that it is expedient in the public interest that a disqualification order under this Article should be made against a person, the Department may apply to the High Court for such an order.

(2) The High Court may, on an application under paragraph (1), make a disqualification order against a person who has been convicted of a relevant foreign offence.

(3) A “relevant foreign offence” is an offence committed outside Northern Ireland—

(a) in connection with—

(i) the promotion, formation, management, liquidation or striking off of a company (or any similar procedure),

(ii) the receivership of a company's property (or any similar procedure), or

(iii) a person being an administrative receiver of a company (or holding a similar position), and

(b) which corresponds to an indictable offence under the law of Northern Ireland.

(4) Where it appears to the Department that, in the case of a person who has offered to give a disqualification undertaking—

(a) the person has been convicted of a relevant foreign offence, and



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- (b) it is expedient in the public interest that the Department should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),  
the Department may accept the undertaking.
- (5) In this Article, “company” includes an overseas company.
- (6) The maximum period of disqualification under an order under this Article is 15 years.”
- (2) Article 8A(2) and (4) of the 2002 Order, as inserted by this paragraph, apply in relation to a conviction of a relevant foreign offence which occurs on or after the day on which this paragraph comes into force regardless of whether the act or omission which constituted the offence occurred before that day.

**Commencement Information**

**I173** Sch. 8 para. 2 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h) (with Sch. para. 8)

*Determining unfitness and disqualification orders: matters to be taken into account*

- 3 (1) The 2002 Order is amended as follows.
- (2) In Article 9 (duty of High Court to disqualify unfit directors of insolvent companies)
- (a) in paragraph (1)(b), for “any other company or companies” substitute “one or more other companies or overseas companies”,
  - (b) after paragraph (1) insert—
    - “(1A) In this Article references to a person's conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency.”,
  - (c) in paragraph (2), omit the words from “and references” to the end, and
  - (d) after paragraph (2) insert—
    - “(2A) For the purposes of this Article, an overseas company becomes insolvent if the company enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction.
    - (2B) In this Article and Article 10, “director” includes a shadow director.”
- (3) In Article 11 (disqualification where expedient in public interest)—
- (a) in paragraph (3)(a) after “shadow director” insert “ (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies), ”,
  - (b) in paragraph (4) after “the company” insert “ (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies) ”, and
  - (c) after paragraph (4) insert—



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“(4A) Paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.”

- (4) Omit Article 13 (matters for determining unfitness of directors).
- (5) After Article 17 insert—

#### **Determining unfitness etc.: matters to be taken into account**

“17A(1) This Article applies where the High Court must determine—

- (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
- (b) whether to exercise any discretion it has to make a disqualification order under any of Articles 5 to 7, 8A, 11 or 14;
- (c) where the Court has decided to make a disqualification order under any of those Articles or is required to make an order under Article 9, what the period of disqualification should be.

(2) This Article also applies where the Department must determine—

- (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
- (b) whether to exercise any discretion the Department has to accept a disqualification undertaking under any of Articles 8A, 10 or 11.

(3) In making any such determination in relation to a person, the High Court or the Department must—

- (a) in every case, have regard in particular to the matters set out in paragraphs 1 to 4 of Schedule 1;
- (b) in a case where the person concerned is or has been a director of a company or overseas company, also have regard in particular to the matters set out in paragraphs 5 to 7 of that Schedule.

(4) In this Article “director” includes a shadow director.

(5) Paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.

(6) The Department may by order modify Schedule 1; and such an order may contain such transitional provision as may appear to the Department to be necessary or expedient.

(7) An order under paragraph (5) is subject to affirmative resolution.”

- (6) For Schedule 1 (matters determining unfitness of directors) substitute—

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## “SCHEDULE 1

Article 17A

### DETERMINING UNFITNESS ETC: MATTERS TO BE TAKEN INTO ACCOUNT

#### *Matters to be taken into account in all cases*

- 1 The extent to which the person was responsible for the causes of any material contravention by a company or overseas company of any applicable legislative or other requirement.
- 2 Where applicable, the extent to which the person was responsible for the causes of a company or overseas company becoming insolvent.
- 3 The frequency of conduct of the person which falls within paragraph 1 or 2.
- 4 The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company or overseas company.

#### *Additional matters to be taken into account where the person is or has been a director*

- 5 Any misfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.
- 6 Any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company or overseas company.
- 7 The frequency of conduct of the director which falls within paragraph 5 or 6.

#### *Interpretation*

- 8 Paragraphs (1A) to (2A) of Article 9 apply for the purposes of this Schedule as they apply for the purposes of that Article.
- 9 In this Schedule “director” includes a shadow director.”

#### **Commencement Information**

**I174** Sch. 8 para. 3 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

#### *Extension of period for applying for disqualification order for unfit directors*

- 4 (1) In Article 10(2) of the 2002 Order (period within which application may be made for disqualification order against unfit director of insolvent company), for “2 years” substitute “ 3 years ”.
- (2) Sub-paragraph (1) applies only to an application relating to a company which has become insolvent after the commencement of that sub-paragraph.
- (3) Article 9(2) of the 2002 Order (meaning of “becoming insolvent”) applies for the purposes of sub-paragraph (2) as it applies for the purposes of Article 9 of that Order.

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### Commencement Information

**I175** Sch. 8 para. 4 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

#### *Reports of office-holders on conduct of directors of insolvent companies*

- 5 (1) The 2002 Order is amended as follows.
- (2) After Article 10 insert—

#### **Office-holder's report on conduct of directors**

- “10A(1) The office-holder in respect of a company which is insolvent must prepare a report (a “conduct report”) about the conduct of each person who was a director of the company—
- (a) on the insolvency date, or
  - (b) at any time during the period of 3 years ending with that date.
- (2) For the purposes of this Article a company is insolvent if—
- (a) the company is in liquidation and at the time it went into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
  - (b) the company has entered administration, or
  - (c) an administrative receiver of the company has been appointed;
- and paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.
- (3) A conduct report must, in relation to each person, describe any conduct of the person which may assist the Department in deciding whether to exercise the power under Article 10(1) or (3) in relation to that person.
- (4) The office-holder must send the conduct report to the Department before the end of—
- (a) the period of 3 months beginning with the insolvency date, or
  - (b) such other longer period as the Department considers appropriate in the particular circumstances.
- (5) If new information comes to the attention of an office-holder, the office-holder must send that information to the Department as soon as reasonably practicable.
- (6) “New information” is information which an office-holder considers should have been included in a conduct report prepared in relation to the company, or would have been so included had it been available before the report was sent.
- (7) If there is more than one office-holder in respect of a company at any particular time (because the company is insolvent by virtue of falling within more than one sub-paragraph of paragraph (2) at that time), paragraph (1) applies only to the first of the office-holders to be appointed.
- (8) In the case of a company which is at different times insolvent by virtue of falling within one or more different sub-paragraphs of paragraph (2)—

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- (a) the references in paragraph (1) to the insolvency date are to be read as references to the first such date during the period in which the company is insolvent, and
  - (b) paragraph (1) does not apply to an office-holder if at any time during the period in which the company is insolvent a conduct report has already been prepared and sent to the Department.
- (9) The “office-holder” in respect of a company which is insolvent is—
- (a) in the case of a company being wound up by the High Court, the official receiver;
  - (b) in the case of a company being wound up otherwise, the liquidator;
  - (c) in the case of a company in administration, the administrator;
  - (d) in the case of a company of which there is an administrative receiver, the receiver.
- (10) The “insolvency date”—
- (a) in the case of a company being wound up by the High Court, means the date on which the Court makes the winding-up order (see Article 105 of the Insolvency (Northern Ireland) Order 1989);
  - (b) in the case of a company being wound up by way of a members' voluntary winding up, means the date on which the liquidator forms the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency under Article 75 of the Insolvency (Northern Ireland) Order 1989;
  - (c) in the case of a company being wound up by way of a creditors' voluntary winding up where no such declaration under Article 75 of that Order has been made, means the date of the passing of the resolution for voluntary winding up;
  - (d) in the case of a company which has entered administration, means the date the company did so;
  - (e) in the case of a company in respect of which an administrative receiver has been appointed, means the date of that appointment.
- (11) For the purposes of paragraph (10)(e), any appointment of an administrative receiver to replace an administrative receiver who has died or vacated office pursuant to Article 55 of the Insolvency (Northern Ireland) Order 1989 is to be ignored.
- (12) In this Article, “director” includes a shadow director.”
- (3) In Article 10 (disqualification order or undertaking and reporting provisions), omit paragraph (4).
- (4) For the heading to Article 10 substitute “ Disqualification orders under Article 9: applications and acceptance of undertakings ”.
- (5) In consequence of the amendment made by sub-paragraph (3), omit paragraph 64 of Schedule 2 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)).

*Status: Point in time view as at 25/05/2018.*

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#### Commencement Information

**I176** Sch. 8 para. 5 in force at 6.4.2016 by S.I. 2016/321, reg. 3(c) (with Sch. paras. 3, 4)

*Directors: removal of restriction on application for disqualification order*

- 6 (1) The 2002 Order is amended as follows.
- (2) In Article 11 (disqualification of director after investigation of company)—
- (a) in paragraph (1), omit “from investigative material”,
  - (b) omit paragraph (2), and
  - (c) in paragraph (3), omit “from such report, information or documents”.
- (3) For the heading of that Article substitute “ Disqualification of director on finding of unfitness ”.

#### Commencement Information

**I177** Sch. 8 para. 6 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

*Persons instructing unfit director*

- 7 After Article 11 of the 2002 Order insert—

*“Persons instructing unfit directors*

#### **Order disqualifying person instructing unfit director of insolvent company**

11A (1) The High Court may make a disqualification order against a person (“P”) if, on an application under Article 11B, it is satisfied—

- (a) either—
  - (i) that a disqualification order under Article 9 has been made against a person who is or has been a director (but not a shadow director) of a company, or
  - (ii) that the Department has accepted a disqualification undertaking from such a person under Article 10(3), and
- (b) that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

(2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

- (a) for which the main transgressor is subject to the order made under Article 9, or
- (b) in relation to which the undertaking was accepted from the main transgressor under Article 10(3),

was the result of the main transgressor acting in accordance with P's directions or instructions.

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- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (4) Under this Article the minimum period of disqualification is 2 years and the maximum period is 15 years.

### **Application for order under Article 11A**

- 11B (1) If it appears to the Department that it is expedient in the public interest that a disqualification order should be made against a person under Article 11A, the Department may—
- (a) make an application to the High Court for such an order, or
  - (b) in a case where an application for an order under Article 9 against the main transgressor has been made by the official receiver, direct the official receiver to make such an application.
- (2) Except with the leave of the High Court, an application for a disqualification order under Article 11A must not be made after the end of the period of 3 years beginning with the day on which the company in question became insolvent (within the meaning given by Article 9(2)).
- (3) Paragraph (5) of Article 10 applies for the purposes of this Article as it applies for the purposes of that Article.

### **Disqualification undertaking instead of an order under Article 11A**

- 11C (1) If it appears to the Department that it is expedient in the public interest to do so, the Department may accept a disqualification undertaking from a person (“P”) if—
- (a) any of the following is the case—
    - (i) a disqualification order under Article 9 has been made against a person who is or has been a director (but not a shadow director) of a company,
    - (ii) the Department has accepted a disqualification undertaking from such a person under Article 10(3), or
    - (iii) it appears to the Department that such an undertaking could be accepted from such a person (if one were offered), and
  - (b) it appears to the Department that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

- (2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the disqualification order made under Article 9,
  - (b) in relation to which the disqualification undertaking was accepted from the main transgressor under Article 10(3), or
  - (c) which led the Department to the conclusion set out in paragraph (1) (a)(iii),

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was the result of the main transgressor acting in accordance with P's directions or instructions.

- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (4) Paragraph (5) of Article 10 applies for the purposes of this Article as it applies for the purposes of that Article.

### **Order disqualifying person instructing unfit director: other cases**

11D (1) The High Court may make a disqualification order against a person (“P”) if, on an application under this Article, it is satisfied—

- (a) either—
  - (i) that a disqualification order under Article 11 has been made against a person who is or has been a director (but not a shadow director) of a company, or
  - (ii) that the Department has accepted a disqualification undertaking from such a person under Article 11(3), and
- (b) that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

- (2) The Department may make an application to the High Court for a disqualification order against P under this Article if it appears to the Department that it is expedient in the public interest for such an order to be made.
- (3) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
  - (a) for which the main transgressor is subject to the order made under Article 11, or
  - (b) in relation to which the undertaking was accepted from the main transgressor under Article 11(3),was the result of the main transgressor acting in accordance with P's directions or instructions.

(4) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(5) Under this Article the maximum period of disqualification is 15 years.

### **Disqualification undertaking instead of an order under Article 11D**

11E (1) If it appears to the Department that it is expedient in the public interest to do so, the Department may accept a disqualification undertaking from a person (“P”) if—

- (a) any of the following is the case—
  - (i) a disqualification order under Article 11 has been made against a person who is or has been a director (but not a shadow director) of a company,

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- (ii) the Department has accepted a disqualification undertaking from such a person under Article 11(3), or
- (iii) it appears to the Department that such an undertaking could be accepted from such a person (if one were offered), and
- (b) it appears to the Department that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

- (2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
  - (a) for which the main transgressor is subject to the disqualification order made under Article 11,
  - (b) in relation to which the disqualification undertaking was accepted from the main transgressor under Article 11(3), or
  - (c) which led the Department to the conclusion set out in paragraph (1)(a)(iii),
 was the result of the main transgressor acting in accordance with P's directions or instructions.
- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.”

#### **Commencement Information**

**I178** Sch. 8 para. 7 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h) (with Sch. para. 9)

#### *Compensation orders and undertakings*

8 After Article 19 of the 2002 Order insert—

#### *“Compensation orders and undertakings*

#### **Compensation orders and undertakings**

- 19A(1) The High Court may make a compensation order against a person on the application of the Department if the Court is satisfied that the conditions mentioned in paragraph (3) are met.
- (2) If it appears to the Department that the conditions mentioned in paragraph (3) are met in respect of a person who has offered to give the Department a compensation undertaking, the Department may accept the undertaking instead of applying, or proceeding with an application, for a compensation order.
  - (3) The conditions are that—
    - (a) the person is subject to a disqualification order or disqualification undertaking under this Order, and
    - (b) conduct for which the person is subject to the order or undertaking has caused loss to one or more creditors of an insolvent company of which the person has at any time been a director.



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- (4) An “insolvent company” is a company that is or has been insolvent and a company becomes insolvent if—
  - (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
  - (b) the company enters administration, or
  - (c) an administrative receiver of the company is appointed.
- (5) The Department may apply for a compensation order at any time before the end of the period of two years beginning with the date on which the disqualification order referred to in paragraph (3)(a) was made, or the disqualification undertaking referred to in that paragraph was accepted.
- (6) In the case of a person subject to a disqualification order under Article 11A or 11D, or a disqualification undertaking under Article 11C or 11E, the reference in paragraph (3)(b) to conduct is a reference to the conduct of the main transgressor in relation to which the person has exercised the requisite amount of influence.

#### **Amounts payable under compensation orders and undertakings**

- 19B (1) A compensation order is an order requiring the person against whom it is made to pay an amount specified in the order—
- (a) to the Department for the benefit of—
    - (i) a creditor or creditors specified in the order;
    - (ii) a class or classes of creditor so specified;
  - (b) as a contribution to the assets of a company so specified.
- (2) A compensation undertaking is an undertaking to pay an amount specified in the undertaking—
- (a) to the Department for the benefit of—
    - (i) a creditor or creditors specified in the undertaking;
    - (ii) a class or classes of creditor so specified;
  - (b) as a contribution to the assets of a company so specified.
- (3) When specifying an amount the High Court (in the case of an order) and the Department (in the case of an undertaking) must in particular have regard to—
- (a) the amount of the loss caused;
  - (b) the nature of the conduct mentioned in Article 19A(3)(b);
  - (c) whether the person has made any other financial contribution in recompense for the conduct (whether under a statutory provision or otherwise).
- (4) An amount payable by virtue of paragraph (2) under a compensation undertaking is recoverable as if payable under a court order.
  - (5) An amount payable under a compensation order or compensation undertaking is provable as a bankruptcy debt.

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### Variation and revocation of compensation undertakings

19C (1) The High Court may, on the application of a person who is subject to a compensation undertaking—

- (a) reduce the amount payable under the undertaking, or
- (b) provide for the undertaking not to have effect.

(2) On the hearing of an application under paragraph (1), the Department must appear and call the attention of the Court to any matters which the Department considers relevant, and may give evidence or call witnesses.”

#### Commencement Information

**I179** Sch. 8 para. 8 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h) (with Sch. para. 10)

*Amendments consequential on, or related to, amendments made by paragraphs 2 to 8*

- 9 (1) The 2002 Order is amended as follows.
- (2) In Article 2(2) (interpretation), after the definition of “the official receiver” insert—
- ““overseas company” is a company which is incorporated or formed outside Northern Ireland;”.
- (3) In Article 3 (disqualification orders: general), in paragraph (2), for “Article 9” substitute “ Articles 9 and 11A ”.
- (4) In Article 4 (disqualification undertakings: general)—
- (a) in paragraph (1), for “10 and 11” substitute “ 8A, 10, 11, 11C and 11E ”, and
  - (b) in paragraph (2), after “10” insert “ or 11C ”.
- (5) In Article 5 (disqualification on conviction of offence punishable only on indictment or either on indictment or summary conviction), after paragraph (1) insert—
- “(1A) In paragraph (1), “company” includes overseas company.”
- (6) In Article 6 (disqualification for persistent default under companies legislation), after paragraph (3A) insert—
- “(3B) In this Article “company” includes overseas company.”
- (7) In Article 8 (disqualification on summary conviction of offence), after paragraph (4A) insert—
- “(4B) In this Article “company” includes overseas company.”
- (8) In Article 9 (duty of High Court to disqualify unfit directors of insolvent companies), in paragraph (2), omit “and Article 10”.
- (9) In Article 10 (disqualifications under Article 9: applications and undertakings), after paragraph (5) insert—
- “(6) Paragraphs (1A) and (2) of Article 9 apply for the purposes of this Article as they apply for the purposes of that Article.”

*Status: Point in time view as at 25/05/2018.*

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- (10) Before Article 12 insert— “ Further provision about disqualification undertakings ”.
- (11) In Article 14 (participation in wrongful trading), after paragraph (2) insert—  
“ (3) In this Article “company” includes overseas company.”
- (12) In Article 20 (application for disqualification order), in paragraph (2), after “any company” insert “ or overseas company ”.
- (13) In Article 22 (register of disqualification orders and undertakings), in paragraph (3) (a), for “10 or 11” substitute “ 8A, 10, 11, 11C or 11E ”.
- (14) In Article 23 (admissibility in evidence of statements), in paragraph (1)—  
(a) for “9 to 14” substitute “ 8A to 14, 17A ”, and  
(b) after “or 19” insert “ to 19C ”.
- (15) In Article 24 (interaction with the Insolvency (Northern Ireland) Order 1989), in paragraphs (1) and (2)—  
(a) for “9 to 14” substitute “ 8A to 14, 17A ”, and  
(b) after “or 19” insert “ to 19C ”.
- (16) In Article 24D (application of Order to building societies), omit paragraph (4).
- (17) Omit Article 24E (application of Order to open-ended investment companies).
- (18) In Article 25 (application of Order to incorporated friendly societies)—  
(a) after paragraph (3) insert—  
“ (3A) In relation to an incorporated friendly society, this Order applies as if Articles 11A to 11E were omitted.”, and  
(b) omit paragraph (4).
- (19) In Article 25A (application of Order to registered societies)—  
(a) omit paragraph (2)(d),  
(b) after paragraph (2)(f) insert—  
“ (g) Articles 11A to 11E are to be disregarded.”, and  
(c) omit paragraph (3).

**Commencement Information**

**I180** Sch. 8 para. 9 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

- 10 Omit paragraph 65 of Schedule 2 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)).

**Commencement Information**

**I181** Sch. 8 para. 10 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

*Status: Point in time view as at 25/05/2018.*

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## SCHEDULE 9

Section 126

### ABOLITION OF REQUIREMENTS TO HOLD MEETINGS; OPTED-OUT CREDITORS

#### PART 1

##### COMPANY INSOLVENCY

###### *Introductory*

1 The Insolvency Act 1986 is amended in accordance with this Part of this Schedule.

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

**I182** Sch. 9 para. 1 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I183** Sch. 9 para. 1 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

###### *Company voluntary arrangements*

2 In section 2(2) (nominee's report on company's proposal), for paragraphs (aa) and (b) substitute—

- “(b) whether, in his opinion, the proposal should be considered by a meeting of the company and by the company's creditors, and
- (c) if in his opinion it should, the date on which, and time and place at which, he proposes a meeting of the company should be held.”

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

**I184** Sch. 9 para. 2 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I185** Sch. 9 para. 2 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

3 (1) Section 3 (summoning of meetings) is amended as follows.

(2) In subsection (1)—

- (a) for the words from “that” to “summoned” substitute “under section 2(2) that the proposal should be considered by a meeting of the company and by the company's creditors”;
- (b) for the words from “directs)” to the end substitute “directs)—
  - (a) summon a meeting of the company to consider the proposal for the time, date and place proposed in the report, and
  - (b) seek a decision from the company's creditors as to whether they approve the proposal.”

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

- (a) summon a meeting of the company to consider the proposal for such time, date and place as he thinks fit, and
- (b) seek a decision from the company's creditors as to whether they approve the proposal.”

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(4) For subsection (3) substitute—

“(3) A decision of the company's creditors as to whether they approve the proposal is to be made by a qualifying decision procedure.

(4) Notice of the qualifying decision procedure must be given to every creditor of the company of whose claim and address the person seeking the decision is aware.”

(5) For the heading substitute “ Consideration of proposal ”.

#### Commencement Information

**I186** Sch. 9 para. 3 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I187** Sch. 9 para. 3 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

4 (1) Section 4 (decisions of meetings) is amended as follows.

(2) For subsection (1) substitute—

“(1) This section applies where, under section 3—

- (a) a meeting of the company is summoned to consider the proposed voluntary arrangement, and
- (b) the company's creditors are asked to decide whether to approve the proposed voluntary arrangement.

(1A) The company and its creditors may approve the proposed voluntary arrangement with or without modifications.”

(3) In subsection (3) for “A meeting so summoned shall not” substitute “ Neither the company nor its creditors may ”.

(4) In subsection (4)—

- (a) for “a meeting so summoned shall not” substitute “ neither the company nor its creditors may ”;
- (b) omit “the meeting may approve”;
- (c) after “such a proposal or modification” insert “ may be approved ”.

(5) In subsection (5) for “each of the meetings” substitute “ the meeting of the company and the qualifying decision procedure ”.

(6) In subsection (6) for “either” substitute “ the company ”.

(7) After subsection (6) insert—

“(6A) After the company's creditors have decided whether to approve the proposed voluntary arrangement the person who sought the decision must—

- (a) report the creditors' decision to the court, and
- (b) immediately after reporting to the court, give notice of the creditors' decision to such persons as may be prescribed.”

(8) In the heading, for “meetings” substitute “ the company and its creditors ”.

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**Commencement Information**

**I188** Sch. 9 para. 4 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I189** Sch. 9 para. 4 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 5 (1) Section 4A (approval of arrangement) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a) for “both meetings summoned under section 3” substitute “the meeting of the company summoned under section 3 and by the company's creditors pursuant to that section”;
- (b) in paragraph (b) for “creditors' meeting summoned under” substitute “company's creditors pursuant to”.
- (3) In subsections (3), (4)(a) and (6)(a) for “creditors' meeting” substitute “company's creditors”.

**Commencement Information**

**I190** Sch. 9 para. 5 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I191** Sch. 9 para. 5 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 6 (1) Section 5 (effect of approval) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a) for “creditors' meeting” substitute “time the creditors decided to approve the voluntary arrangement”;
- (b) in paragraph (b)(i) for the words from “at that” to “it” substitute “in the qualifying decision procedure by which the creditors' decision to approve the voluntary arrangement was made”.
- (3) In subsection (4)(a) after “4(6)” insert “and (6A)”.

**Commencement Information**

**I192** Sch. 9 para. 6 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I193** Sch. 9 para. 6 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 7 (1) Section 6 (challenge of decisions) is amended as follows.
- (2) In subsection (1)(b) for “either of the meetings” substitute “the meeting of the company, or in relation to the relevant qualifying decision procedure”.
- (3) After subsection (1) insert—
- “(1A) In this section—
- (a) the “relevant qualifying decision procedure” means the qualifying decision procedure in which the company's creditors decide whether to approve a voluntary arrangement;

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- (b) references to a decision made in the relevant qualifying decision procedure include any other decision made in that qualifying decision procedure.”
- (4) In subsection (2)—
  - (a) in paragraph (a) for “either of the meetings” substitute “ the meeting of the company or in the relevant qualifying decision procedure ”;
  - (b) in paragraph (aa) for “at the creditors' meeting” substitute “ in the relevant qualifying decision procedure ”.
- (5) In subsection (3)(a) after “4(6)” insert “ and (6A) ”.
- (6) In subsection (3)(b)—
  - (a) for “creditors' meeting” substitute “ relevant qualifying decision procedure ”;
  - (b) for “the meeting” substitute “ the relevant qualifying decision procedure ”.
- (7) In subsection (4), for “one or both” substitute “ any ”.
- (8) In subsection (4)(a), for “in question” substitute “ of the company, or in the relevant qualifying decision procedure, ”.
- (9) In subsection (4)(b)—
  - (a) for “further meetings” substitute “ a further company meeting ”;
  - (b) for “, a further company or (as the case may be) creditors” substitute “ and relating to the company meeting, a further company ”.
- (10) In subsection (4), after paragraph (b) insert—
  - “(c) direct any person—
    - (i) to seek a decision from the company's creditors (using a qualifying decision procedure) as to whether they approve any revised proposal the person who made the original proposal may make, or
    - (ii) in a case falling within subsection (1)(b) and relating to the relevant qualifying decision procedure, to seek a decision from the company's creditors (using a qualifying decision procedure) as to whether they approve the original proposal.”
- (11) In subsection (5) for “for the summoning of meetings to consider” substitute “ or (c) in relation to ”.
- (12) In subsection (6)—
  - (a) after “meeting” insert “ or relevant qualifying decision procedure ”;
  - (b) in paragraph (a) after “(4)(b)” insert “ or (c) ”.
- (13) In subsection (7)—
  - (a) the words from “a decision” to the end become paragraph (a);
  - (b) in that paragraph (a), after “at a” insert “ company ”;
  - (c) after that paragraph (a) insert “, and
    - (b) a decision of the company's creditors made in the relevant qualifying decision procedure is not invalidated by any irregularity in relation to the relevant qualifying decision procedure.”

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#### Commencement Information

**I194** Sch. 9 para. 7 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I195** Sch. 9 para. 7 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 8 In section 7(2)(a) for “given at one or both of the meetings summoned under” substitute “ of the voluntary arrangement by the company or its creditors (or both) pursuant to ”.

#### Commencement Information

**I196** Sch. 9 para. 8 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I197** Sch. 9 para. 8 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 9 (1) Schedule A1 (moratorium where directors propose voluntary arrangement) is amended as follows.
- (2) For paragraph 6(2)(c) substitute—
- “(c) the proposed voluntary arrangement should be considered by a meeting of the company and by the company's creditors.”
- (3) For paragraph 7(1)(e)(iii) substitute—
- “(iii) the proposed voluntary arrangement should be considered by a meeting of the company and by the company's creditors.”
- (4) For paragraph 8(2) to (4) substitute—
- “(2) A moratorium ends with the later of—
- (a) the day on which the company meeting summoned under paragraph 29 is first held, and
- (b) the day on which the company's creditors decide whether to approve the proposed voluntary arrangement,
- unless it is extended under paragraph 32; but this is subject to the rest of this paragraph.
- (3) In this paragraph the “initial period” means the period of 28 days beginning with the day on which the moratorium comes into force.
- (3A) If the company meeting has not first met before the end of the initial period the moratorium ends at the end of that period, unless before the end of that period it is extended under paragraph 32.
- (3B) If the company's creditors have not decided whether to approve the proposed voluntary arrangement before the end of the initial period the moratorium ends at the end of that period, unless before the end of that period—
- (a) the moratorium is extended under paragraph 32, or
- (b) a meeting of the company's creditors is summoned in accordance with section 246ZE.



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- (3C) Where sub-paragraph (3B)(b) applies, the moratorium ends with the day on which the meeting of the company's creditors is first held, unless it is extended under paragraph 32.
- (4) The moratorium ends at the end of the initial period if the nominee has not before the end of that period—
- (a) summoned a meeting of the company, and
  - (b) sought a decision from the company's creditors,
- as required by paragraph 29(1).”
- (5) For paragraph 8(6)(c) substitute—
- “(c) a decision of one or both of—
    - (i) the meeting of the company summoned under paragraph 29,
    - or
    - (ii) the company's creditors.”
- (6) For the heading before paragraph 29 substitute “Duty to summon company meeting and seek creditors' decision”.
- (7) In paragraph 29(1), for the words from “shall” to the end substitute “shall—
- (a) summon a meeting of the company to consider the proposed voluntary arrangement for such a time, date (within the period of time for the time being specified in paragraph 8(3)) and place as he thinks fit, and
  - (b) seek a decision from the company's creditors as to whether they approve the proposed voluntary arrangement.”
- (8) For paragraph 29(2) substitute—
- “(2) The decision of the company's creditors is to be made by a qualifying decision procedure.
  - (3) Notice of the qualifying decision procedure must be given to every creditor of the company of whose claim the nominee is aware.”
- (9) In the heading before paragraph 30, for “meetings” substitute “ company meeting and qualifying decision procedure ”.
- (10) In paragraph 30(1) for “meetings summoned under paragraph 29” substitute “ company meeting summoned under paragraph 29 and the qualifying decision procedure instigated under that paragraph ”.
- (11) In paragraph 30(2) for “A meeting so summoned” substitute “ The company meeting summoned under paragraph 29 ”.
- (12) In paragraph 30(3) for “either” substitute “ the company ”.
- (13) After paragraph 30(3) insert—
- “(4) After the company's creditors have decided whether to approve the proposed voluntary arrangement the nominee must—
    - (a) report the decision to the court, and
    - (b) immediately after reporting to the court, give notice of the decision to such persons as may be prescribed.”

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(14) For paragraph 31(1) substitute—

“(1) This paragraph applies where under paragraph 29—

- (a) a meeting of the company is summoned to consider the proposed voluntary arrangement, and
- (b) the nominee seeks a decision from the company's creditors as to whether they approve the proposed voluntary arrangement.

(1A) The company and its creditors may approve the proposed voluntary arrangement with or without modifications.”

(15) In paragraph 31(4) for “A meeting summoned under paragraph 29 shall not” substitute “ Neither the company nor its creditors may ”.

(16) In paragraph 31(5) for “a meeting so summoned shall not” substitute “ neither the company nor its creditors may ”.

(17) In paragraph 31(6) for “The meeting may approve such a proposal or modification” substitute “ Such a proposal or modification may be approved ”.

(18) In paragraph 31(7)—

- (a) for the words from “period” to “held” substitute “ relevant period ”;
- (b) for “those meetings” substitute “ the company and its creditors ”.

(19) In paragraph 31, after sub-paragraph (7) insert—

“(7A) The “relevant period” is—

- (a) in relation to the company, the period of seven days ending with the company meeting summoned under paragraph 29 being held;
- (b) in relation to the company's creditors, the period of 14 days ending with the end of the period mentioned in paragraph 8(3).

(7B) Where under sub-paragraph (7) the nominee is given notice of proposed modifications, the nominee must seek a decision from the company's creditors (using a qualifying decision procedure) as to whether the proposed voluntary arrangement should be approved with those modifications.”

(20) In paragraph 32(1), after “a” insert “ company ”.

(21) In paragraph 32, after sub-paragraph (1) insert—

“(1A) Subject to sub-paragraph (2) the company's creditors may, by a qualifying decision procedure, decide to extend (or further extend) the moratorium, with or without conditions.”

(22) For paragraph 32(2) substitute—

“(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of two months beginning with the day after the last day of the period mentioned in paragraph 8(3).”

(23) In paragraph 32(3)—

- (a) for “At any meeting where” substitute “ Where ”;
- (b) after “the meeting” insert “ of the company or (as the case may be) inform the company's creditors ”.

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- (24) In paragraph 32(4)—
- (a) after “a meeting” insert “ of the company or informs the company's creditors, ”;
  - (b) after “resolve” insert “ , or (as the case may be) the creditors by a qualifying decision procedure shall decide, ”.
- (25) In paragraph 32(6) for “may resolve” substitute “ of the company may resolve, and the creditors by a qualifying decision procedure may decide, ”.
- (26) In paragraph 33(3) for “At any meeting where” substitute “ Where ”.
- (27) In paragraph 35, for sub-paragraphs (1) and (2) substitute—
- “(1) This paragraph applies where in accordance with paragraph 32 a meeting of the company resolves, or the company's creditors decide, that the moratorium be extended (or further extended).
- (1A) The meeting may resolve, and the company's creditors may by a qualifying decision procedure decide, that a committee be established to exercise the functions conferred on it by the meeting or (as the case may be) by the company's creditors.
- (2) The meeting may resolve that such a committee be established only if—
- (a) the nominee consents, and
  - (b) the meeting approves an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.
- (2A) A decision of the company's creditors that such a committee be established is to be taken as made only if—
- (a) the nominee consents, and
  - (b) the creditors by a qualifying decision procedure approve an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.”

(28) In paragraph 36(2)—

    - (a) in paragraph (a) for “both meetings summoned under paragraph 29” substitute “ the meeting of the company summoned under paragraph 29 and by the company's creditors ”;
    - (b) in paragraph (b) for “creditors' meeting summoned under that paragraph” substitute “ company's creditors ”.

(29) In paragraph 36(3), (4)(a) and (5)(a) for “creditors' meeting” substitute “ company's creditors ”.

(30) In paragraph 37(2)—

    - (a) in paragraph (a) for “creditors' meeting” substitute “ time the creditors decided to approve the voluntary arrangement ”;
    - (b) in paragraph (b)(i) for the words from “at that” to “it” substitute “in the qualifying decision procedure by which the creditors' decision to approve the voluntary arrangement was made”.

(31) In paragraph 37(5)(a)—

    - (a) omit “of the meetings”;
    - (b) after “30(3)” insert “ and (4) ”.

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- (32) In paragraph 38(1)—
- (a) in paragraph (a) for the words from “approved” to “effect” substitute “ which has taken effect under paragraph 37 ”;
  - (b) in paragraph (b) for “either of those meetings” substitute “ the meeting of the company summoned under paragraph 29, or in relation to the relevant qualifying decision procedure ”.
- (33) After paragraph 38(1) insert—
- “(1A) In this paragraph—
- (a) the “relevant qualifying decision procedure” means the qualifying decision procedure in which the creditors decided whether to approve the voluntary arrangement;
  - (b) references to a decision made in the relevant qualifying decision procedure include any other decision made in that qualifying decision procedure.”
- (34) In paragraph 38(2)—
- (a) in paragraph (a) for “either of the meetings” substitute “ the meeting of the company or in the relevant qualifying decision procedure ”;
  - (b) in paragraph (b) for “at the creditors' meeting” substitute “ in the relevant qualifying decision procedure ”.
- (35) In paragraph 38(3)(a) after “30(3)” insert “ and (4) ”.
- (36) In paragraph 38(3)(b)—
- (a) for “creditors' meeting” substitute “ relevant qualifying decision procedure ”;
  - (b) for “the meeting” substitute “ the relevant qualifying decision procedure ”.
- (37) In paragraph 38(4)(a)(ii) for “in question” substitute “ of the company, or in the relevant qualifying decision procedure, ”.
- (38) In paragraph 38(4)(b)—
- (a) for “further meetings” substitute “ a further company meeting ”;
  - (b) after “(1)(b)” insert “ and relating to the company meeting ”;
  - (c) omit “or (as the case may be) creditors”.
- (39) In paragraph 38(4), after paragraph (b) insert—
- “(c) direct any person—
- (i) to seek a decision from the company's creditors (using a qualifying decision procedure) as to whether they approve any revised proposal for a voluntary arrangement which the directors may make, or
  - (ii) in a case falling within sub-paragraph (1)(b) and relating to the relevant qualifying decision procedure, to seek a decision from the company's creditors (using a qualifying decision procedure) as to whether they approve the original proposal.”
- (40) In paragraph 38(5), after “(4)(b)(i)” insert “ or (c)(i) ”.
- (41) In paragraph 38(6) and (7)(a), after “(4)(b)” insert “ or (c) ”.

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- (42) In paragraph 38(9)—
- (a) the words from “a decision” to the end become paragraph (a);
  - (b) in that paragraph (a), after “at a” insert “ company ”;
  - (c) after that paragraph (a) insert “, and
    - (b) a decision of the company's creditors made in the relevant qualifying decision procedure is not invalidated by any irregularity in relation to the relevant qualifying decision procedure.”
- (43) In paragraph 39(1) for the words from “approved” to the end substitute “ has taken effect under paragraph 37. ”
- (44) In paragraph 40(5)—
- (a) in paragraph (c), omit “creditors or”;
  - (b) after paragraph (c) insert—
    - “(ca) require a decision of the company's creditors to be sought (using a qualifying decision procedure) on such matters as the court may direct.”.
- (45) For paragraph 44(8) substitute—
- “(8) The appropriate regulator must be given notice of any qualifying decision procedure by which a decision of the company's creditors is sought for the purposes of this Schedule.
  - (8A) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules participate in (but not vote in) any qualifying decision procedure by which a decision of the company's creditors is sought for the purposes of this Schedule.”
- (46) Omit paragraph 44(9)(a).
- (47) In paragraph 44(17A)(b) for “sub-paragraph” substitute “ sub-paragraphs (8A) and ”.

#### **Commencement Information**

**I198** Sch. 9 para. 9 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I199** Sch. 9 para. 9 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

#### *Administration*

- 10 (1) Schedule B1 (administration) is amended as follows.
- (2) In paragraph 49(4)(b), after “company” insert “, other than an opted-out creditor, ”.
  - (3) Omit paragraph 50 and the heading before it.
  - (4) For the heading before paragraph 51 substitute “ Consideration of administrator's proposals by creditors ”.
  - (5) In paragraph 51, for sub-paragraphs (1) to (3) substitute—

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- “(1) The administrator must seek a decision from the company's creditors as to whether they approve the proposals set out in the statement made under paragraph 49(1).
- (2) The initial decision date for that decision must be within the period of 10 weeks beginning with the day on which the company enters administration.
- (3) The “initial decision date” for that decision—
- (a) if the decision is initially sought using the deemed consent procedure, is the date on which a decision will be made if the creditors by that procedure approve the proposals, and
  - (b) if the decision is initially sought using a qualifying decision procedure, is the date on or before which a decision will be made if it is made by that qualifying decision procedure (assuming that date does not change after the procedure is instigated).”
- (6) In paragraph 52(2), for the words from “summon” to “requested” substitute “ seek a decision from the company's creditors as to whether they approve the proposals set out in the statement made under paragraph 49(1) if requested to do so ”.
- (7) For paragraph 52(3) substitute—
- “(3) Where a decision is sought by virtue of sub-paragraph (2) the initial decision date (as defined in paragraph 51(3)) must be within the prescribed period.”
- (8) For the heading before paragraph 53 substitute “Creditors' decision”.
- (9) In paragraph 53, for sub-paragraph (1) substitute—
- “(1) The company's creditors may approve the administrator's proposals—
- (a) without modification, or
  - (b) with modification to which the administrator consents.”
- (10) In paragraph 53(2)—
- (a) for “After the conclusion of an initial creditors' meeting the” substitute “ The ”.
  - (b) after “taken” insert “ by the company's creditors ”.
- (11) In paragraph 54(1)(a) for “at an initial creditors' meeting” substitute “ by the company's creditors ”.
- (12) Omit paragraph 54(2)(a).
- (13) In paragraph 54(2)(b)—
- (a) omit “with the notice of the meeting sent”;
  - (b) after “creditor” insert “ who is not an opted-out creditor ”.
- (14) For paragraph 54(2)(d) substitute—
- “(d) seek a decision from the company's creditors as to whether they approve the proposed revision.”
- (15) For paragraph 54(5) substitute—
- “(5) The company's creditors may approve the proposed revision—
- (a) without modification, or

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- (b) with modification to which the administrator consents.”
- (16) In paragraph 54(6)—
- (a) for “After the conclusion of a creditors' meeting the” substitute “ The ”;
- (b) after “taken” insert “ by the company's creditors ”.
- (17) For paragraph 55(1) substitute—
- “(1) This paragraph applies where an administrator—
- (a) reports to the court under paragraph 53 that a company's creditors have failed to approve the administrator's proposals, or
- (b) reports to the court under paragraph 54 that a company's creditors have failed to approve a revision of the administrator's proposals.”
- (18) In the heading before paragraph 56, for “meetings” substitute “ decisions ”.
- (19) In paragraph 56(1), for “summon a creditors' meeting”—
- (a) in the first place, substitute “ seek a decision from the company's creditors on a matter ”;
- (b) in the second place, substitute “ do so ”.
- (20) In paragraph 56(2), for “summon a creditors' meeting” substitute “ seek a decision from the company's creditors on a matter ”.
- (21) In paragraph 57(1), for “A creditors' meeting may” substitute “ The company's creditors may, in accordance with the rules, ”.
- (22) Omit paragraph 58 and the heading before it.
- (23) In paragraph 62, for the words from “may” to the end substitute “may—
- (a) call a meeting of members of the company;
- (b) seek a decision on any matter from the company's creditors.”
- (24) For paragraph 74(4)(c) substitute—
- “(c) require a decision of the company's creditors to be sought on a matter;”.
- (25) For paragraph 78(1)(b) substitute—
- “(b) if the company has unsecured debts, the unsecured creditors of the company.”
- (26) For paragraph 78(2)(b)(ii) substitute—
- “(ii) the preferential creditors of the company.”
- (27) After paragraph 78(2) insert—
- “(2A) Whether the company's unsecured creditors or preferential creditors consent is to be determined by the administrator seeking a decision from those creditors as to whether they consent.”
- (28) Omit paragraph 78(3).
- (29) In paragraph 79(2)(c) for “a creditors' meeting requires him to” substitute “ the company's creditors decide that he must ”.
- (30) In paragraph 80(4) after “company” insert “ , other than an opted-out creditor, ”.

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- (31) In paragraph 83(5)(b) after “creditor” insert “, other than an opted-out creditor,”.
- (32) In paragraph 83(8)(d) omit “98,”.
- (33) In paragraph 84(5)(b) after “creditor” insert “, other than an opted-out creditor,”.
- (34) In the heading before paragraph 97, for “meeting” substitute “ decision ”.
- (35) For paragraph 97(2) and (3) substitute—
- “(2) The administrator may be replaced by a decision of the creditors made by a qualifying decision procedure.
- (3) The decision has effect only if, before the decision is made, the new administrator has consented to act in writing.”
- (36) In paragraph 98(2)(b), for the second “resolution” substitute “ decision ”.
- (37) For paragraph 98(3)(b)(ii) substitute—
- “(ii) the preferential creditors of the company.”
- (38) After paragraph 98(3) insert—
- “(3A) In a case where the administrator is removed from office, a decision of the creditors for the purposes of sub-paragraph (2)(b), or of the preferential creditors for the purposes of sub-paragraph (2)(ba), must be made by a qualifying decision procedure.”
- (39) In paragraph 108(1) omit “, 50(1)(b)”.
- (40) For paragraph 108(2)(b) substitute—
- “(b) if the company has unsecured debts, the unsecured creditors of the company.”
- (41) For paragraph 108(3)(b)(ii) substitute—
- “(ii) the preferential creditors of the company.”
- (42) After paragraph 108(3) insert—
- “(3A) Whether the company's unsecured creditors or preferential creditors consent is to be determined by the administrator seeking a decision from those creditors as to whether they consent.”
- (43) Omit paragraph 108(4).
- (44) In paragraph 111, omit the definitions of “correspondence” and “creditors' meeting”.

#### **Commencement Information**

**I200** Sch. 9 para. 10 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I201** Sch. 9 para. 10 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 11 (1) Schedule 10 (offences) is amended as follows.
- (2) In the entry for Schedule B1, paragraph 51(5), in column 2, for “arrange initial creditors' meeting” substitute “seek creditors' decision”.



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- (3) In the entry for Schedule B1, paragraph 53(3), in column 2, for “at initial creditors' meeting” substitute “by creditors”.
- (4) In the entry for Schedule B1, paragraph 54(7), in column 2, for the words from “decision” to “consider” insert “creditors' decision on”.
- (5) In the entry for Schedule B1, paragraph 56(2), in column 2, for “summon creditors' meeting” substitute “seek creditors' decision”.

#### Commencement Information

- I202** Sch. 9 para. 11 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I203** Sch. 9 para. 11 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

#### *Receivers and managers*

- 12 (1) Section 48 (report by administrative receiver - England and Wales) is amended as follows.
- (2) In subsection (1), after “such creditors” insert “, other than opted-out creditors,”.
  - (3) In subsection (2)—
    - (a) in paragraph (a), after “company” insert “, other than opted-out creditors,”;
    - (b) omit the words after paragraph (b).
  - (4) Omit subsection (3).

#### Commencement Information

- I204** Sch. 9 para. 12 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I205** Sch. 9 para. 12 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 13 In section 49(1) (committee of creditors - England and Wales), for the words from the beginning to “fit” substitute “ Where an administrative receiver has sent or published a report as mentioned in section 48(2) the company's unsecured creditors may, in accordance with the rules ”.

#### Commencement Information

- I206** Sch. 9 para. 13 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I207** Sch. 9 para. 13 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 14 (1) Section 67 (report by receiver - Scotland) is amended as follows.
- (2) In subsection (1), after “such creditors” insert “, other than opted-out creditors,”.
  - (3) In subsection (2)—
    - (a) in paragraph (a), after “company” insert “, other than opted-out creditors,”;
    - (b) omit the words after paragraph (b).

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(4) Omit subsection (3).

**Commencement Information**

- I208** Sch. 9 para. 14 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I209** Sch. 9 para. 14 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 15 In section 68(1) (committee of creditors - Scotland), for the words from the beginning to “fit” substitute “ Where a receiver has sent or published a report as mentioned in section 67(2) the company's unsecured creditors may, in accordance with the rules ”.

**Commencement Information**

- I210** Sch. 9 para. 15 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I211** Sch. 9 para. 15 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

*Winding-up*

- 16 In section 92A(1) (members' voluntary winding-up in England and Wales: progress report to company) for “sections 96 and 102” substitute “ section 96 ”.

**Commencement Information**

- I212** Sch. 9 para. 16 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I213** Sch. 9 para. 16 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 17 <sup>[F1]</sup>In section 93(1) (members' voluntary winding-up in Scotland: company meeting at year's end) for “sections 96 and 102” substitute “section 96”.]

**Textual Amendments**

- F1** Sch. 9 para. 17 repealed (1.4.2016 for specified purposes, otherwise in accordance with art. 1(4) of the repealing Order) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\)](#), arts. 1(3), 7(1) (with arts. 14, 15)

**Commencement Information**

- I214** Sch. 9 para. 17 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I215** Sch. 9 para. 17 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 18 For section 94 (members' voluntary winding up: final meeting of company prior to dissolution) substitute—

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#### “94 Final account prior to dissolution

- (1) As soon as the company's affairs are fully wound up the liquidator must make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of.
- (2) The liquidator must send a copy of the account to the members of the company before the end of the period of 14 days beginning with the day on which the account is made up.
- (3) The liquidator must send a copy of the account to the registrar of companies before the end of that period (but not before sending it to the members of the company).
- (4) If the liquidator does not comply with subsection (2) the liquidator is liable to a fine.
- (5) If the liquidator does not comply with subsection (3) the liquidator is liable to a fine and, for continued contravention, a daily default fine.”

#### Commencement Information

**I216** Sch. 9 para. 18 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I217** Sch. 9 para. 18 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 19 (1) Section 95 (effect of company's insolvency) is amended as follows.
- (2) After subsection (1) insert—
    - “(1A) The liquidator must before the end of the period of 7 days beginning with the day after the day on which the liquidator formed that opinion—
      - (a) make out a statement in the prescribed form as to the affairs of the company, and
      - (b) send it to the company's creditors.”
  - (3) Omit subsections (2) to (3) and (5) to (7).
  - (4) After subsection (4A) insert—
    - “(4B) The company's creditors may in accordance with the rules nominate a person to be liquidator.
    - (4C) The liquidator must in accordance with the rules seek such a nomination from the company's creditors.”
  - (5) In subsection (8), for “this section” substitute “ subsections (1) to (4A) ”.

#### Commencement Information

**I218** Sch. 9 para. 19 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I219** Sch. 9 para. 19 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

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20 (1) For section 96 (conversion to creditors' voluntary winding up) substitute—

**“96 Conversion to creditors' voluntary winding up**

- (1) The winding up becomes a creditors' voluntary winding up as from the day on which—
  - (a) the company's creditors under section 95 nominate a person to be liquidator, or
  - (b) the procedure by which the company's creditors were to have made such a nomination concludes without a nomination having been made.
- (2) As from that day this Act has effect as if the directors' declaration under section 89 had not been made.
- (3) The liquidator in the creditors' voluntary winding up is to be the person nominated by the company's creditors under section 95 or, where no person has been so nominated, the existing liquidator.
- (4) In the case of the creditors nominating a person other than the existing liquidator any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—
  - (a) directing that the existing liquidator is to be liquidator instead of or jointly with the person nominated by the creditors, or
  - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.
- (5) The “existing liquidator” is the person who is liquidator immediately before the winding up becomes a creditors' voluntary winding up.”

(2) In section 96 (as inserted by sub-paragraph (1)), after subsection (4) insert—

“(4A) The court shall grant an application under subsection (4) made by the holder of a qualifying floating charge in respect of the company's property (within the meaning of paragraph 14 of Schedule B1) unless the court thinks it right to refuse the application because of the particular circumstances of the case.”

**Commencement Information**

**I220** Sch. 9 para. 20 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I221** Sch. 9 para. 20 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

21 In section 97(2) (application of Chapter 4), for “98 and 99” substitute “99 and 100”.

**Commencement Information**

**I222** Sch. 9 para. 21 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I223** Sch. 9 para. 21 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

22 Omit section 98 (meeting of creditors).

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#### Commencement Information

**I224** Sch. 9 para. 22 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I225** Sch. 9 para. 22 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

23 (1) Section 99 (directors to lay statement of affairs before creditors) is amended as follows.

(2) For subsection (1) substitute—

“(1) The directors of the company must, before the end of the period of 7 days beginning with the day after the day on which the company passes a resolution for voluntary winding up—

(a) make out a statement in the prescribed form as to the affairs of the company, and

(b) send the statement to the company's creditors.”

(3) For subsection (3) substitute—

“(3) If the directors without reasonable excuse fail to comply with subsection (1), (2) or (2A), they are guilty of an offence and liable to a fine.”

#### Commencement Information

**I226** Sch. 9 para. 23 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I227** Sch. 9 para. 23 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

24 For section 100(1) (appointment of liquidator) substitute—

“(1) The company may nominate a person to be liquidator at the company meeting at which the resolution for voluntary winding up is passed.

(1A) The company's creditors may in accordance with the rules nominate a person to be liquidator.

(1B) The directors of the company must in accordance with the rules seek such a nomination from the company's creditors.”

#### Commencement Information

**I228** Sch. 9 para. 24 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I229** Sch. 9 para. 24 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

25 (1) Section 101 (appointment of liquidation committee) is amended as follows.

(2) For subsection (1) substitute—

“(1) The creditors may in accordance with the rules appoint a committee (“the liquidation committee”) of not more than 5 persons to exercise the functions conferred on it by or under this Act.”

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(3) In subsection (3)—

- (a) for “resolve” (in both places) substitute “decide”;
- (b) for “the persons mentioned in the resolution” (in both places) substitute “those persons”.

**Commencement Information**

**I230** Sch. 9 para. 25 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I231** Sch. 9 para. 25 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

26 Omit section 102 (creditors' meeting where winding up converted under section 96).

**Commencement Information**

**I232** Sch. 9 para. 26 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I233** Sch. 9 para. 26 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

27 In section 104A (progress report to company and creditors at year's end (England and Wales)), in subsection (1)(b)(i), after “creditors” insert “, other than opted-out creditors”.

**Commencement Information**

**I234** Sch. 9 para. 27 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I235** Sch. 9 para. 27 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

28 <sup>[F2]</sup>In section 105(4) (meetings of company and creditors at each year's end (Scotland)) for “creditors meeting under section 95 is held” substitute “liquidator sends a statement of affairs to the company's creditors under section 95(1A)(b)”].

**Textual Amendments**

**F2** Sch. 9 para. 28 repealed (1.4.2016 for specified purposes and otherwise in accordance with art. 1(4) of the repealing Order) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\)](#), arts. 1(3), 7(1) (with arts. 14, 15)

**Commencement Information**

**I236** Sch. 9 para. 28 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I237** Sch. 9 para. 28 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

29 For section 106 (creditors' voluntary winding-up: final meetings of company and creditors prior to dissolution) substitute—

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### “106 Final account prior to dissolution

- (1) As soon as the company's affairs are fully wound up the liquidator must make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of.
- (2) The liquidator must, before the end of the period of 14 days beginning with the day on which the account is made up—
  - (a) send a copy of the account to the company's members,
  - (b) send a copy of the account to the company's creditors (other than opted-out creditors), and
  - (c) give the company's creditors (other than opted-out creditors) a notice explaining the effect of section 173(2)(e) and how they may object to the liquidator's release.
- (3) The liquidator must during the relevant period send to the registrar of companies—
  - (a) a copy of the account, and
  - (b) a statement of whether any of the company's creditors objected to the liquidator's release.
- (4) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator's release.
- (5) If the liquidator does not comply with subsection (2) the liquidator is liable to a fine.
- (6) If the liquidator does not comply with subsection (3) the liquidator is liable to a fine and, for continued contravention, a daily default fine.”

#### Commencement Information

**I238** Sch. 9 para. 29 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I239** Sch. 9 para. 29 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 30 In section 114(2) (powers of directors in voluntary winding up where no liquidator nominated by company)—
- (a) omit “98 (creditors' meeting) and”;
  - (b) after “affairs)” insert “ and 100(1B) (nomination of liquidator by creditors)”

#### Commencement Information

**I240** Sch. 9 para. 30 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I241** Sch. 9 para. 30 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 31 (1) Section 136 (functions of official receiver in relation to office of liquidator) is amended as follows.



*Status: Point in time view as at 25/05/2018.*

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- (2) In subsection (4) for “summon separate meetings of” substitute “ in accordance with the rules seek nominations from ”.
- (3) In subsection (5)(a) and (c), omit “to summon meetings”.
- (4) In subsection (6), for “summon meetings of” substitute “ seek nominations from ”.

**Commencement Information**

**I242** Sch. 9 para. 31 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I243** Sch. 9 para. 31 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 32 (1) Section 137 (appointment by Secretary of State) is amended as follows.
- (2) In subsection (2)—
    - (a) for “meetings are held” substitute “ nominations are sought from the company's creditors and contributories ”;
    - (b) omit “of those meetings”.
  - (3) In subsection (5), for the words from “shall” to the end substitute “ must explain the procedure for establishing a liquidation committee under section 141. ”

**Commencement Information**

**I244** Sch. 9 para. 32 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I245** Sch. 9 para. 32 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 33 (1) Section 138 (appointment of liquidator in Scotland) is amended as follows.
- (2) In subsection (3), for “summon separate meetings of” substitute “ in accordance with the rules seek nominations from ”.
  - (3) In subsection (4), for the words from “summon under” to the second “meeting of” substitute “ seek a nomination from the company's contributories under subsection (3), he may seek a nomination only from ”.
  - (4) In subsection (5)—
    - (a) for “one or more meetings are held” substitute “ a nomination is sought from the company's creditors, or nominations are sought from the company's creditors and contributories, ”;
    - (b) for “by the meeting or meetings” substitute “ as a result ”.

**Commencement Information**

**I246** Sch. 9 para. 33 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I247** Sch. 9 para. 33 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 34 (1) Section 139 (choice of liquidator at meetings of creditors and contributories) is amended as follows.



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- (2) In subsection (1), for “separate meetings of the company's creditors and contributories are summoned” substitute “ nominations are sought from the company's creditors and contributories ”.
- (3) In subsection (2) for “at their respective meetings may” substitute “ may in accordance with the rules ”.
- (4) In the heading, for “at meetings of” substitute “ by ”.

#### Commencement Information

**I248** Sch. 9 para. 34 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I249** Sch. 9 para. 34 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 35 In section 140(3) (appointment of liquidator by court following administration or voluntary arrangement), for the words from “he” to the end substitute “ section 136(5)(a) and (b) does not apply. ”

#### Commencement Information

**I250** Sch. 9 para. 35 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I251** Sch. 9 para. 35 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 36 In section 141 (liquidation committee: England and Wales) for subsections (1) to (3) substitute—

- “(1) This section applies where a winding up order has been made by the court in England and Wales.
- (2) If both the company's creditors and the company's contributories decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules.
- (3) If only the company's creditors, or only the company's contributories, decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules unless the court orders otherwise.
- (3A) A “liquidation committee” is a committee having such functions as are conferred on it by or under this Act.
- (3B) The liquidator must seek a decision from the company's creditors and contributories as to whether a liquidation committee should be established if requested, in accordance with the rules, to do so by one-tenth in value of the company's creditors.
- (3C) Subsection (3B) does not apply where the liquidator is the official receiver.”

#### Commencement Information

**I252** Sch. 9 para. 36 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

*Status: Point in time view as at 25/05/2018.*

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**I253** Sch. 9 para. 36 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 37 (1) Section 142 (liquidation committee (Scotland)) is amended as follows.
- (2) For subsections (1) to (4) substitute—
- “(1) This section applies where a winding up order has been made by the court in Scotland.
- (2) If both the company's creditors and the company's contributories decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules.
- (3) If only the company's creditors, or only the company's contributories, decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules unless the court orders otherwise.
- (4) A liquidator appointed by the court other than under section 139(4)(a) must seek a decision from the company's creditors and contributories as to whether a liquidation committee should be established if requested, in accordance with the rules, to do so by one-tenth in value of the company's creditors.”
- (3) In subsection (6), for the words from “In” to “has” substitute “ A “liquidation committee” is a committee having the powers and duties conferred and imposed on it by this Act, and ”.

**Commencement Information**

**I254** Sch. 9 para. 37 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I255** Sch. 9 para. 37 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 38 For section 146 (compulsory winding-up - duty to summon final meeting) substitute—

**“146 Final account**

- (1) This section applies where a company is being wound up by the court and the liquidator is not the official receiver.
- (2) If it appears to the liquidator that the winding up of the company is for practical purposes complete the liquidator must make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of.
- (3) The liquidator must—
- (a) send a copy of the account to the company's creditors (other than opted-out creditors), and
  - (b) give the company's creditors (other than opted-out creditors) a notice explaining the effect of section 174(4)(d) and how they may object to the liquidator's release.

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- (4) The liquidator must during the relevant period send to the court and the registrar of companies—
- (a) a copy of the account, and
  - (b) a statement of whether any of the company's creditors objected to the liquidator's release.
- (5) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator's release.”

**Commencement Information**

**I256** Sch. 9 para. 38 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I257** Sch. 9 para. 38 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 39 In section 160(1) (delegation of court's powers to liquidator (England and Wales)) for paragraph (a) substitute—
- “(a) the seeking of decisions on any matter from creditors and contributories.”.

**Commencement Information**

**I258** Sch. 9 para. 39 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I259** Sch. 9 para. 39 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 40 (1) Section 166 (liquidator's powers and duties in creditors' voluntary winding up) is amended as follows.
- (2) In subsection (2), for the words from “during” to the end substitute “before—
- (a) the company's creditors under section 100 nominate a person to be liquidator, or
  - (b) the procedure by which the company's creditors were to have made such a nomination concludes without a nomination having been made.”
- (3) Omit subsection (4).
- (4) In subsection (5), for the words from the beginning to the end of paragraph (b) substitute
- “If the directors fail to comply with—
- (a) section 99(1), (2) or (2A), or
  - (b) section 100(1B),”.

**Commencement Information**

**I260** Sch. 9 para. 40 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I261** Sch. 9 para. 40 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

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41 In section 168 (liquidator's supplementary powers: England and Wales) for subsection (2) substitute—

“(2) The liquidator may seek a decision on any matter from the company's creditors or contributories; and must seek a decision on a matter—

- (a) from the company's creditors, if requested to do so by one-tenth in value of the creditors;
- (b) from the company's contributories, if requested to do so by one-tenth in value of the contributories.”

#### Commencement Information

**I262** Sch. 9 para. 41 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I263** Sch. 9 para. 41 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

42 (1) Section 171 (removal of liquidator in voluntary winding up) is amended as follows.

(2) In subsection (2)(b), for “general meeting of the company's creditors summoned” substitute “ decision of the company's creditors made by a qualifying decision procedure instigated ”.

(3) For subsection (3) substitute—

“(3) Where the liquidator in a members' voluntary winding up was appointed by the court under section 108, a meeting such as is mentioned in subsection (2)

- (a) shall be summoned only if—
  - (a) the liquidator thinks fit,
  - (b) the court so directs, or
  - (c) the meeting is requested in accordance with the rules by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting.

(3A) Where the liquidator in a creditors' voluntary winding up was appointed by the court under section 108, a qualifying decision procedure such as is mentioned in subsection (2)(b) is to be instigated only if—

- (a) the liquidator thinks fit,
- (b) the court so directs, or
- (c) it is requested in accordance with the rules by not less than one-half in value of the company's creditors.”

(4) For subsection (6) substitute—

“(6) In the case of a members' voluntary winding up where the liquidator has produced an account of the winding up under section 94 (final account), the liquidator vacates office as soon as the liquidator has complied with section 94(3) (requirement to send final account to registrar).

(7) In the case of a creditors' voluntary winding up where the liquidator has produced an account of the winding up under section 106 (final account), the liquidator vacates office as soon as the liquidator has complied with section 106(3) (requirement to send final account etc. to registrar).”

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#### Commencement Information

**I264** Sch. 9 para. 42 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I265** Sch. 9 para. 42 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 43 (1) Section 172 (removal of liquidator in compulsory winding up) is amended as follows.
- (2) In subsection (2), for “general meeting of the company's creditors summoned” substitute “ decision of the company's creditors made by a qualifying decision procedure instigated ”.
- (3) In subsection (3)—
- (a) in paragraph (a) omit “a meeting of”;
- (b) for the words from “a general meeting” to “the meeting” substitute “ a qualifying decision procedure such as is mentioned in subsection (2) shall be instigated only if the liquidator thinks fit, the court so directs, or it ”.
- (4) For subsection (8) substitute—
- “(8) Where the liquidator has produced an account of the winding up under section 146 (final account), the liquidator vacates office as soon as the liquidator has complied with section 146(4) (requirement to send account etc. to registrar and to court).”

#### Commencement Information

**I266** Sch. 9 para. 43 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I267** Sch. 9 para. 43 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 44 (1) Section 173 (release of liquidator in voluntary winding up) is amended as follows.
- (2) In subsection (2), for paragraphs (a) and (b) substitute—
- “(a) in the following cases, the time at which notice is given to the registrar of companies in accordance with the rules that the person has ceased to hold office—
- (i) the person has been removed from office by a general meeting of the company,
- (ii) the person has been removed from office by a decision of the company's creditors and the company's creditors have not decided against his release,
- (iii) the person has died;
- (b) in the following cases, such time as the Secretary of State may, on the application of the person, determine—
- (i) the person has been removed from office by a decision of the company's creditors and the company's creditors have decided against his release,
- (ii) the person has been removed from office by the court,
- (iii) the person has vacated office under section 171(4);”.
- (3) In subsection (2)(d), for “(6)(a)” substitute “ (6) ”.

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(4) In subsection (2), for paragraph (e) substitute—

“(e) in the case of a person who has vacated office under section 171(7)

- (i) if any of the company's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, such time as the Secretary of State may, on an application by that person, determine, and
- (ii) otherwise, the time at which the person vacated office.”

(5) After subsection (2) insert—

“(2A) Where the person is removed from office by a decision of the company's creditors, any decision of the company's creditors as to whether the person should have his release must be made by a qualifying decision procedure.”

#### **Commencement Information**

**I268** Sch. 9 para. 44 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I269** Sch. 9 para. 44 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

45 (1) Section 174 (release of liquidator in compulsory winding up) is amended as follows.

(2) In subsection (2)(a), for “a general meeting of” substitute “the company's”.

(3) In subsection (4), for paragraphs (a) and (b) substitute—

“(a) in the following cases, the time at which notice is given to the court in accordance with the rules that the person has ceased to hold office—

- (i) the person has been removed from office by a decision of the company's creditors and the company's creditors have not decided against his release,
- (ii) the person has died;

(b) in the following cases, such time as the Secretary of State may, on the application of the person, determine—

- (i) the person has been removed from office by a decision of the company's creditors and the company's creditors have decided against his release;
- (ii) the person has been removed from office by the court or the Secretary of State;
- (iii) the person has vacated office under section 172(5) or (7);”.

(4) In subsection (4)(d), for sub-paragraphs (i) and (ii) substitute—

- “(i) if any of the company's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, such time as the Secretary of State may, on an application by that person, determine, and
- (ii) otherwise, the time at which the person vacated office.”

(5) After subsection (4) insert—

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“(4ZA) Where the person is removed from office by a decision of the company's creditors, any decision of the company's creditors as to whether the person should have his release must be made by a qualifying decision procedure.”

**Commencement Information**

- I270** Sch. 9 para. 45 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I271** Sch. 9 para. 45 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

46 Omit section 194 (resolutions passed at adjourned meetings).

**Commencement Information**

- I272** Sch. 9 para. 46 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I273** Sch. 9 para. 46 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 47 (1) Section 195 (meetings to ascertain wishes of creditors or contributories) is amended as follows.
- (2) In subsection (1)(b), for the words from “meetings” to the end substitute “ qualifying decision procedures to be instigated or the deemed consent procedure to be used in accordance with any directions given by the court, and appoint a person to report the result to the court ”.
- (3) In the heading, for “Meetings” substitute “ Court's powers ”.

**Commencement Information**

- I274** Sch. 9 para. 47 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I275** Sch. 9 para. 47 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 48 (1) Section 201 (voluntary winding up - dissolution) is amended as follows.
- (2) In subsection (1)—
- (a) omit “and return”;
- (b) after “or” insert “ his final account and statement under ”.
- (3) In subsection (2)—
- (a) for “and return” substitute “ , or the account and statement, ”;
- (b) after “register” insert “ it or ”;
- (c) for “the return” substitute “ the account ”.

**Commencement Information**

- I276** Sch. 9 para. 48 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I277** Sch. 9 para. 48 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)



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- 49 In section 202(3) (early dissolution in England and Wales) after “creditors” insert “, other than opted-out creditors,”.

**Commencement Information**

- I278** Sch. 9 para. 49 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I279** Sch. 9 para. 49 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
 (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 50 In section 204(2) (early dissolution: Scotland) for “meeting or meetings” substitute “ liquidator has been appointed ”.

**Commencement Information**

- I280** Sch. 9 para. 50 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I281** Sch. 9 para. 50 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
 (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 51 (1) Section 205 (compulsory winding up - dissolution) is amended as follows.  
 (2) For subsection (1)(a) substitute—  
     “(a) a final account and statement sent under section 146(4) (final account);”.
- (3) In subsection (2)—  
 (a) after “receipt of” insert “ the final account and statement or ”;  
 (b) after “register” insert “ them or ”;  
 (c) omit the second “of the notice”.

**Commencement Information**

- I282** Sch. 9 para. 51 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I283** Sch. 9 para. 51 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
 (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 52 In section 208(2) (misconduct in course of winding up), for “at any meeting” substitute “ in connection with any qualifying decision procedure or deemed consent procedure ”.

**Commencement Information**

- I284** Sch. 9 para. 52 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I285** Sch. 9 para. 52 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
 (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 53 (1) Schedule 10 (offences) is amended as follows.  
 (2) For the entries for section 94(4) and (6) substitute—



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“94(4)	Liquidator failing to send to company members a copy of account of winding up	Summary	Level 3 on the standard scale	
94(5)	Liquidator failing to send to registrar a copy of account of winding up	Summary	Level 3 on the standard scale	One tenth of level 3 on the standard scale.”

(3) In the entry for section 95(8), in column 2, for “s. 95” substitute “ s. 95(1) to (4A) ”.

(4) Omit the entry for section 98(6).

(5) In the entry for section 99(3), in column 2, for the words from “attend” to “meeting” substitute “ send statement in prescribed form to creditors ”.

(6) For the entries for section 106(4) and (6) substitute—

“106(5)	Liquidator failing to send to company members and creditors a copy of account of winding up	Summary	Level 3 on the standard scale	
106(6)	Liquidator failing to send to registrar a copy of account of winding up	Summary	Level 3 on the standard scale	One tenth of level 3 on the standard scale.”

**Commencement Information**

**I286** [Sch. 9 para. 53](#) in force at 26.5.2015 for specified purposes by [S.I. 2015/1329, reg. 3\(d\)](#)

**I287** [Sch. 9 para. 53](#) in force at 6.4.2017 for E.W. in so far as not already in force by [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))

*Other provision*

- 54 (1) Section 246A (remote attendance at meetings) is amended as follows.
- (2) In subsection (1), for the words from “applies to” to the end substitute “applies to any meeting of the members of a company summoned by the office-holder under this Act or the rules, other than a meeting of the members of the company in a members' voluntary winding up.”
- (3) In subsection (8) for “creditors, members or contributories” substitute “ members ”.
- (4) In subsection (9)(c), for the words from “made” to “of members,” substitute “ made ”.

**Commencement Information**

**I288** [Sch. 9 para. 54](#) in force at 26.5.2015 for specified purposes by [S.I. 2015/1329, reg. 3\(d\)](#)

**I289** [Sch. 9 para. 54](#) in force at 6.4.2017 for E.W. in so far as not already in force by [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))

- 55 In section 387(2) and (2A) (definition of “relevant date”) for “meetings to consider” substitute “ consideration of ”.

*Status: Point in time view as at 25/05/2018.*

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**Commencement Information**

- I290** Sch. 9 para. 55 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I291** Sch. 9 para. 55 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 56 In section 433(3)(a) (admissibility of evidence in statement of affairs etc)—
- (a) omit “98(6),”;
  - (b) for “99(3)(a)” substitute “ 99(3) ”.

**Commencement Information**

- I292** Sch. 9 para. 56 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I293** Sch. 9 para. 56 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 57 (1) Section 434B (representation of companies at meetings) is amended as follows.
- (2) In subsection (1), for paragraph (a) substitute—
    - “(a) in a qualifying decision procedure, held in pursuance of this Act or of rules made under it, by which a decision is sought from the creditors of a company, or”.
  - (3) In the heading, after “corporations” insert “ in decision procedures and ”.

**Commencement Information**

- I294** Sch. 9 para. 57 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I295** Sch. 9 para. 57 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 58 In Schedule 8, after paragraph 9 insert—
- “9A Provision about how a company's creditors may nominate a person to be liquidator, including in the case of a voluntary winding up provision conferring functions on the directors of the company.”

**Commencement Information**

- I296** Sch. 9 para. 58 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I297** Sch. 9 para. 58 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 59 (1) Paragraph 10 of Schedule 8 (power to make provision about creditors committees etc) is amended as follows.
- (2) In sub-paragraph (1)—
    - (a) after “to the” insert “ establishment, ”;
    - (b) for “established under” substitute “ provided for by ”.
  - (3) In sub-paragraph (2)—
    - (a) in paragraph (a), omit “a meeting of” in both places;

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(b) in paragraph (b), for “a meeting of” substitute “ seeking a decision from ”.

**Commencement Information**

**I298** Sch. 9 para. 59 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I299** Sch. 9 para. 59 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

**PART 2**

INDIVIDUAL INSOLVENCY

*Introductory*

60 The Insolvency Act 1986 is amended in accordance with this Part of this Schedule.

**Commencement Information**

**I300** Sch. 9 para. 60 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I301** Sch. 9 para. 60 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

*Individual voluntary arrangements*

- 61 (1) Section 256 (nominee's report on debtor's proposal) is amended as follows.
- (2) At the end of subsection (1)(a) insert “ and ”.
- (3) In subsection (1)(aa)—
- (a) for “a meeting of the debtor's creditors should be summoned to” substitute “ the debtor's creditors should ”;
- (b) omit “, and”.
- (4) Omit subsection (1)(b).
- (5) In subsection (5) for “a meeting of the debtor's creditors should be summoned to” substitute “ the debtor's creditors should ”.
- (6) In subsection (6), for “a meeting of the debtor's creditors to be summoned” substitute “ the debtor's creditors ”.

**Commencement Information**

**I302** Sch. 9 para. 61 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I303** Sch. 9 para. 61 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 62 (1) Section 256A (nominee's report on debtor's proposal) is amended as follows.
- (2) At the end of subsection (3)(a) insert “ and ”.
- (3) In subsection (3)(b)—

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(a) for “a meeting of the debtor's creditors should be summoned to” substitute “ the debtor's creditors should ”;

(b) omit “, and”.

(4) Omit subsection (3)(c).

**Commencement Information**

**I304** Sch. 9 para. 62 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I305** Sch. 9 para. 62 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

63 In the heading before section 257, for “meeting” substitute “ decisions ”.

**Commencement Information**

**I306** Sch. 9 para. 63 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I307** Sch. 9 para. 63 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

64 (1) Section 257 (summoning of creditors' meeting) is amended as follows.

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

“(1) This section applies where it has been reported to the court under section 256 or to the debtor's creditors under section 256A that the debtor's creditors should consider the debtor's proposal.

(2) The nominee (or the nominee's replacement under section 256(3) or 256A(4)) must seek a decision from the debtor's creditors as to whether they approve the proposed voluntary arrangement (unless, in the case of a report to which section 256 applies, the court otherwise directs).

(2A) The decision is to be made by a creditors' decision procedure.

(2B) Notice of the creditors' decision procedure must be given to every creditor of the debtor of whose claim and address the nominee (or the nominee's replacement) is aware.”

(3) In subsection (3)(b), for “meeting” substitute “creditors' decision procedure”.

(4) For the heading substitute “ Consideration of debtor's proposal by creditors ”.

**Commencement Information**

**I308** Sch. 9 para. 64 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I309** Sch. 9 para. 64 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

65 (1) Section 258 (decision of creditors' meeting) is amended as follows.

(2) For subsection (1) substitute—

“(1) This section applies where under section 257 the debtor's creditors are asked to decide whether to approve the proposed voluntary arrangement.”

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- (3) In subsections (2), (4) and (5) for “meeting” (in each place) substitute “creditors”.
- (4) In subsection (2)—
  - (a) after “with” insert “or without”;
  - (b) for “do so” insert “approve it with modifications”.
- (5) Omit subsection (6).
- (6) For the heading substitute “Approval of debtor's proposal”.

#### Commencement Information

**I310** Sch. 9 para. 65 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I311** Sch. 9 para. 65 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

66 (1) Section 259 (report of decisions to court) is amended as follows.

(2) For subsection (1) substitute—

- “(1) When pursuant to section 257 the debtor's creditors have decided whether to approve the debtor's proposal (with or without modifications), the nominee (or the nominee's replacement under section 256(3) or 256A(4)) must—
- (a) give notice of the creditors' decision to such persons as may be prescribed, and
  - (b) where the creditors considered the debtor's proposal pursuant to a report to the court under section 256(1)(aa), report the creditors' decision to the court.”

(3) In subsection (2), for “meeting has” substitute “creditors have”.

#### Commencement Information

**I312** Sch. 9 para. 66 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I313** Sch. 9 para. 66 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

67 (1) Section 260 (effect of approval) is amended as follows.

(2) In subsection (1) for “the meeting summoned under section 257 approves” substitute “pursuant to section 257 the debtor's creditors decide to approve”.

(3) In subsection (2)—

- (a) in paragraph (a) for “at the meeting” substitute “at the time the creditors decided to approve the proposal”;
- (b) in paragraph (b)(i) for the words from “at the” to “it” substitute “in the creditors' decision procedure by which the decision to approve the proposal was made”.

(4) In subsection (4) for “meeting” substitute “decision”.

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#### Commencement Information

**I314** Sch. 9 para. 67 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I315** Sch. 9 para. 67 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 68 (1) Section 261 (additional effect on undischarged bankrupt) is amended as follows.
- (2) In subsection (1)(a), for “the creditors' meeting summoned under section 257 approves” substitute “pursuant to section 257 the debtor's creditors decide to approve”.
- (3) In subsection (3)(a), for “decision of the creditors' meeting” substitute “creditors' decision”.

#### Commencement Information

**I316** Sch. 9 para. 68 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I317** Sch. 9 para. 68 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 69 (1) Section 262 (challenge of meeting's decision) is amended as follows.
- (2) In subsection (1)(a), for “a creditors' meeting summoned under” substitute “a decision of the debtor's creditors pursuant to”.
- (3) In subsection (1)(b), for “at or in relation to such a meeting” substitute “in relation to a creditors' decision procedure instigated under that section”.
- (4) In subsection (2)(b)(i), for “at the creditors' meeting” substitute “in the creditors' decision procedure”.
- (5) In subsection (3)(b)—
- (a) for “creditors' meeting” substitute “creditors' decision procedure”;
- (b) for “the meeting had taken place” substitute “a decision as to whether to approve the proposed voluntary arrangement had been made”.
- (6) In subsection (4)(a) for “the meeting” substitute “a decision of the debtor's creditors”.
- (7) For subsection (4)(b) substitute—
- “(b) direct any person to seek a decision from the debtor's creditors (using a creditors' decision procedure) as to whether they approve—
- (i) any revised proposal the debtor may make, or
- (ii) in a case falling within subsection (1)(b), the debtor's original proposal.”
- (8) In subsection (5)—
- (a) for “for the summoning of a meeting to consider” substitute “in relation to”;
- (b) for “given at the previous meeting” substitute “previously given by the debtor's creditors”.
- (9) In subsection (7), for “meeting”, in each place, substitute “decision”.

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(10) In subsection (8), for the words from “an approval” to the end substitute “the approval of a voluntary arrangement by a decision of the debtor's creditors pursuant to section 257 is not invalidated by any irregularity in relation to the creditors' decision procedure by which the decision was made.”

(11) In the heading for “meeting's” substitute “creditors”.

**Commencement Information**

**I318** Sch. 9 para. 69 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I319** Sch. 9 para. 69 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

70 In section 262B(1) (prosecution of delinquent debtors), for “creditors' meeting summoned under” substitute “ decision of the debtor's creditors pursuant to ”.

**Commencement Information**

**I320** Sch. 9 para. 70 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I321** Sch. 9 para. 70 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

71 In section 262C (arrangements coming to an end prematurely), for “creditors' meeting summoned under” substitute “ decision of the debtor's creditors pursuant to ”.

**Commencement Information**

**I322** Sch. 9 para. 71 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I323** Sch. 9 para. 71 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

72 In section 263(1) (implementation and supervision of approved voluntary arrangement), for “creditors' meeting summoned under” substitute “ decision of the debtor's creditors pursuant to ”.

**Commencement Information**

**I324** Sch. 9 para. 72 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I325** Sch. 9 para. 72 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

*Bankruptcy*

73 In section 276(1)(b)(ii) (default in connection with voluntary arrangement) for “at or in connection with a meeting summoned” substitute “in connection with a creditors' decision procedure instigated”.



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**Commencement Information**

- I326** Sch. 9 para. 73 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I327** Sch. 9 para. 73 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
 (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 74 In section 283(4)(a) (definition of bankrupt's estate), for the words from “a meeting” to “held” substitute “ the trustee of that estate has vacated office under section 298(8) ”.

**Commencement Information**

- I328** Sch. 9 para. 74 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I329** Sch. 9 para. 74 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
 (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 75 In section 287(3)(c) (powers of interim receiver), for “summon a general meeting of” substitute “ seek a decision on a matter from ”.

**Commencement Information**

- I330** Sch. 9 para. 75 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I331** Sch. 9 para. 75 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
 (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 76 In section 296(5) (trustee to give notice relating to creditors' committees), for paragraphs (a) and (b) substitute “explain the procedure for establishing a creditors' committee under section 301.”

**Commencement Information**

- I332** Sch. 9 para. 76 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)  
**I333** Sch. 9 para. 76 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
 (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 77 (1) Section 298 (trustee's vacation of office) is amended as follows.
- (2) In subsection (1), for “general meeting of the bankrupt's creditors summoned” substitute “decision of the bankrupt's creditors made by a creditors' decision procedure instigated”.
- (3) In subsection (4)—
- (a) for “general meeting of the bankrupt's creditors shall be summoned” substitute “creditors' decision procedure may be instigated”;
- (b) for “replacing” substitute “ removing ”;
- (c) in paragraph (c)—
- (i) omit “the meeting is requested by”;
- (ii) after “bankrupt's creditors” insert “ so requests, ”.
- (4) After subsection (4) insert—



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“(4A) Where the bankrupt's creditors decide to remove a trustee, they may in accordance with the rules appoint another person as trustee in his place.

(4B) Where the decision to remove a trustee is made under subsection (4), the decision does not take effect until the bankrupt's creditors appoint another person as trustee in his place.”

(5) In subsection (8), for the words from “a final” to the end substitute “ the trustee has given notice under section 331(2). ”

(6) After subsection (8) insert—

“(8A) A notice under subsection (8)—

- (a) must not be given before the end of the period prescribed by the rules as the period within which the bankrupt's creditors may object to the trustee's release, and
- (b) must state whether any of the bankrupt's creditors objected to the trustee's release.”

#### **Commencement Information**

**I334** Sch. 9 para. 77 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I335** Sch. 9 para. 77 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 78 (1) Section 299 (release of trustee) is amended as follows.
- (2) In subsection (1)(a), omit “a general meeting of”.
- (3) In subsection (3)(a)—
- (a) for the words from “case” to “died” substitute “ following cases ”;
  - (b) after “hold office” insert “—
    - (i) the person has been removed from office by a decision of the bankrupt's creditors and the creditors have not decided against his release,
    - (ii) the person has died;”.
- (4) For subsection (3)(b) substitute—
- “(b) in the following cases, such time as the Secretary of State may, on an application by the person, determine—
- (i) the person has been removed from office by a decision of the bankrupt's creditors and the creditors have decided against his release,
  - (ii) the person has been removed from office by the court or by the Secretary of State,
  - (iii) the person has vacated office under section 298(6);”.
- (5) In subsection (3)(d), for paragraphs (i) and (ii) substitute—
- “(i) if any of the bankrupt's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, such time as the Secretary of State may, on an application by that person, determine, and

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(ii) otherwise, the time at which the person vacated office.”

(6) After subsection (3) insert—

“(3A) Where the person is removed from office by a decision of the bankrupt's creditors, any decision of the bankrupt's creditors as to whether the person should have his release must be made by a creditors' decision procedure.”

**Commencement Information**

**I336** Sch. 9 para. 78 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I337** Sch. 9 para. 78 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

79 (1) Section 300 (vacancy in office of trustee) is amended as follows.

(2) For subsection (3) substitute—

“(3) The official receiver may ask the bankrupt's creditors to appoint a person as trustee, and must do so if so requested by not less than one tenth in value of the bankrupt's creditors.

(3A) If the official receiver makes such a request the bankrupt's creditors may in accordance with the rules appoint a person as trustee.”

(3) In subsection (4) for the words from “summoned” to “vacancy” substitute “ asked, and is not proposing to ask, the bankrupt's creditors to appoint a person as trustee ”.

(4) In subsection (8) for the words from “holding” to “331” substitute “ vacation of office by the trustee under section 298(8) ”.

**Commencement Information**

**I338** Sch. 9 para. 79 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I339** Sch. 9 para. 79 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

80 (1) Section 301 (creditors' committees) is amended as follows.

(2) In subsection (1), for the words from “general” to “otherwise)” substitute “ bankrupt's creditors ”.

(3) In subsection (2)—

(a) for “A general meeting of the” substitute “ The ”;

(b) for “an appointment made by that meeting” substitute “ the appointment ”.

**Commencement Information**

**I340** Sch. 9 para. 80 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I341** Sch. 9 para. 80 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

81 In section 314(7) (trustee's power and duty to summon creditors' meeting)—

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- (a) for “summon a general meeting of” substitute “ seek a decision on a matter from”;
- (b) for “summon such a meeting” substitute “ seek a decision on a matter ”.

**Commencement Information**

**I342** Sch. 9 para. 81 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I343** Sch. 9 para. 81 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
(with reg. 5) (as amended by S.I. 2017/363, reg. 3)

82 In section 330 (final distribution), after subsection (1) insert—

“(1A) A notice under subsection (1)(b) need not be given to opted-out creditors.”

**Commencement Information**

**I344** Sch. 9 para. 82 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I345** Sch. 9 para. 82 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
(with reg. 5) (as amended by S.I. 2017/363, reg. 3)

83 (1) Section 331 (final meeting) is amended as follows.

(2) For subsection (2) substitute—

“(2) The trustee must give the bankrupt's creditors (other than opted-out creditors) notice that it appears to the trustee that the administration of the bankrupt's estate is for practical purposes complete.

(2A) The notice must—

- (a) be accompanied by a report of the trustee's administration of the bankrupt's estate;
- (b) explain the effect of section 299(3)(d) and how the creditors may object to the trustee's release.”

(3) Omit subsections (3) and (4).

(4) In the heading, for “meeting” substitute “ report ”.

**Commencement Information**

**I346** Sch. 9 para. 83 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I347** Sch. 9 para. 83 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
(with reg. 5) (as amended by S.I. 2017/363, reg. 3)

84 In section 332(2) (bankrupt's home), for “summon a meeting under section 331” substitute “ give notice under section 331(2) ”.

**Commencement Information**

**I348** Sch. 9 para. 84 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I349** Sch. 9 para. 84 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e)  
(with reg. 5) (as amended by S.I. 2017/363, reg. 3)

*Status: Point in time view as at 25/05/2018.*

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- 85 In section 356(2)(c) (offence of making false statements)—
- (a) for “at any meeting of his creditors” substitute “in connection with any creditors' decision procedure or deemed consent procedure”;
  - (b) for “at such a meeting” substitute “ in connection with such a procedure ”.

**Commencement Information**

**I350** Sch. 9 para. 85 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I351** Sch. 9 para. 85 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 86 In Schedule 9, after paragraph 12 insert—
- “12A Provision about how a bankrupt's creditors may appoint a person as trustee.”

**Commencement Information**

**I352** Sch. 9 para. 86 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I353** Sch. 9 para. 86 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

- 87 In paragraph 13 of Schedule 9 (creditors' committee)—
- (a) after “to the” insert “ establishment, ”;
  - (b) for “established under” substitute “ provided for by ”.

**Commencement Information**

**I354** Sch. 9 para. 87 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I355** Sch. 9 para. 87 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

*Other provision*

- 88 Omit section 379A (remote attendance at meetings) and the heading before it.

**Commencement Information**

**I356** Sch. 9 para. 88 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)

**I357** Sch. 9 para. 88 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

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## SCHEDULE 10

Section 133

### TRUSTEES IN BANKRUPTCY

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

1 The Insolvency Act 1986 is amended as provided in paragraphs 2 to 11.

#### **Commencement Information**

**I358** Sch. 10 para. 1 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

2 In section 286(3) (interim receiver to have powers and duties conferred by section 287) for “of a receiver and manager under” substitute “ given by ”.

#### **Commencement Information**

**I359** Sch. 10 para. 2 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

3 (1) Section 287 (receivership pending appointment of first trustee) is amended as follows.

(2) For the heading substitute “ Powers of interim receiver ”.

(3) In subsection (1)—

- (a) for the words from the beginning to “official receiver” substitute “ An interim receiver appointed under section 286 ”;
- (b) for “bankrupt's estate” substitute “ debtor's property ”.

(4) In subsection (2)—

- (a) for “the official” substitute “ an interim ”;
- (b) for “bankrupt's estate” substitute “ debtor's property ”;
- (c) for “the estate” (in both places) substitute “ the property ”.

(5) In subsection (3)—

- (a) for “The official” substitute “ An interim ”;
- (b) for “of the estate” substitute “ of the debtor's property ”;
- (c) in paragraph (a), for the words from “any” to the end substitute “ the debtor's property, ”;
- (d) for paragraph (b), substitute—
  - “(b) is not required to do anything that involves his incurring expenditure, except in pursuance of directions given by—
    - (i) the Secretary of State, where the official receiver is the interim receiver, or
    - (ii) the court, in any other case,”;
- (e) in paragraph (c) for “bankrupt's” substitute “debtor's”.

(6) In subsection (4)—

- (a) for paragraph (a) substitute—

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- “(a) an interim receiver acting as receiver or manager of the debtor's property under this section seizes or disposes of any property which is not the debtor's property, and”;
- (b) in paragraph (b) for “official receiver” substitute “ interim receiver ”;
- (c) for “official receiver is” substitute “ interim receiver is ”;
- (d) for “bankruptcy” substitute “ interim receivership ”.

(7) Omit subsection (5).

**Commencement Information**

**I360** Sch. 10 para. 3 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

- 4 Omit section 291(1) to (3) (bankrupt's duty to deliver possession of estate to official receiver).

**Commencement Information**

**I361** Sch. 10 para. 4 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

- 5 (1) Section 292 (power to make appointments) is amended as follows.
- (2) For the heading substitute “ Appointment of trustees: general provision ”.
- (3) For subsection (1) substitute—
- “(1) This section applies to any appointment of a person (other than the official receiver) as trustee of a bankrupt's estate.”
- (4) Omit subsection (5).

**Commencement Information**

**I362** Sch. 10 para. 5 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

- 6 Omit sections 293 to 295 (meeting of creditors to appoint first trustee).

**Commencement Information**

**I363** Sch. 10 para. 6 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

- 7 In section 296 (appointment of trustee by Secretary of State)—
- (a) in subsection (1) omit “(other than section 297(1) below)”;
  - (b) in subsection (3) omit “or on a reference under section 295”.

**Commencement Information**

**I364** Sch. 10 para. 7 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

- 8 Omit section 297.

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**Commencement Information**

**I365** Sch. 10 para. 8 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

- 9 (1) Section 298 (removal of trustees) is amended as follows.
- (2) Omit subsection (2).
- (3) In subsection (4)—
- (a) for “section 293(3) or 295(4)” substitute “ section 291A(1) ”;
  - (b) for “section 297(5)” substitute “ section 291A(2) ”.

**Commencement Information**

**I366** Sch. 10 para. 9 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

- 10 Omit paragraph 10 of Schedule 9 (exercise by official receiver of functions under section 287).

**Commencement Information**

**I367** Sch. 10 para. 10 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

- 11 In paragraph 30 of Schedule 9 omit “, of the official receiver while acting as a receiver or manager under section 287”.

**Commencement Information**

**I368** Sch. 10 para. 11 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

*Enterprise and Regulatory Reform Act 2013 (c. 24)*

- 12 In Schedule 19 to the Enterprise and Regulatory Reform Act 2013, omit paragraphs 20 to 22.

**Commencement Information**

**I369** Sch. 10 para. 12 in force at 6.4.2017 for E.W. by S.I. 2016/1020, reg. 4(f)

SCHEDULE 11

Section 144

SINGLE REGULATOR OF INSOLVENCY PRACTITIONERS: SUPPLEMENTARY PROVISION

*Operation of this Schedule*

- 1 (1) This Schedule has effect in relation to regulations under section 144 designating a body (referred to in this Schedule as “the Regulations”) as follows—
- (a) paragraphs 2 to 13 have effect where the Regulations establish the body;

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- (b) paragraphs 6, 7 and 9 to 13 have effect where the Regulations designate an existing body (see section 144(2)(b));
  - (c) paragraph 14 also has effect where the Regulations designate an existing body that is an unincorporated association.
- (2) Provision made in the Regulations by virtue of paragraph 6 or 12, where that paragraph has effect as mentioned in sub-paragraph (1)(b), may only apply in relation to—
- (a) things done by or in relation to the body in or in connection with the exercise of functions conferred on it by the Regulations, and
  - (b) functions of the body which are functions so conferred.

**Commencement Information**

**I370** Sch. 11 para. 1 in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by S.I. 2015/1689, reg. 3(b)

*Name, members and chair*

- 2
- (1) The Regulations must prescribe the name by which the body is to be known.
  - (2) The Regulations must provide that the members of the body must be appointed by the Secretary of State after such consultation as the Secretary of State thinks appropriate.
  - (3) The Regulations must provide that the Secretary of State must appoint one of the members as the chair of the body.
  - (4) The Regulations may include provision about—
    - (a) the terms on which the members of the body hold and vacate office;
    - (b) the terms on which the person appointed as the chair holds and vacates that office.

**Commencement Information**

**I371** Sch. 11 para. 2 in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by S.I. 2015/1689, reg. 3(b)

*Remuneration etc.*

- 3
- (1) The Regulations must provide that the body must pay to its chair and members such remuneration and allowances in respect of expenses properly incurred by them in the exercise of their functions as the Secretary of State may determine.
  - (2) The Regulations must provide that, as regards any member (including the chair) in whose case the Secretary of State so determines, the body must pay or make provision for the payment of—
    - (a) such pension, allowance or gratuity to or in respect of that person on retirement or death as the Secretary of State may determine, or
    - (b) such contributions or other payment towards the provision of such a pension, allowance or gratuity as the Secretary of State may determine.
  - (3) The Regulations must provide that where—



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- (a) a person ceases to be a member of the body otherwise than on the expiry of the term of office, and
  - (b) it appears to the Secretary of State that there are special circumstances which make it right for that person to be compensated,
- the body must make a payment to the person by way of compensation of such amount as the Secretary of State may determine.

#### Commencement Information

**I372** Sch. 11 para. 3 in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by S.I. 2015/1689, reg. 3(b)

#### *Staff*

- 4 The Regulations must provide that—
- (a) the body may appoint such persons to be its employees as the body considers appropriate, and
  - (b) the employees are to be appointed on such terms and conditions as the body may determine.

#### Commencement Information

**I373** Sch. 11 para. 4 in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by S.I. 2015/1689, reg. 3(b)

#### *Proceedings*

- 5 (1) The Regulations may make provision about the proceedings of the body.
- (2) The Regulations may, in particular—
- (a) authorise the body to exercise any function by means of committees consisting wholly or partly of members of the body;
  - (b) provide that the validity of proceedings of the body, or of any such committee, is not affected by any vacancy among the members or any defect in the appointment of a member.

#### Commencement Information

**I374** Sch. 11 para. 5 in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by S.I. 2015/1689, reg. 3(b)

#### *Fees*

- 6 (1) The Regulations may make provision—
- (a) about the setting and charging of fees by the body in connection with the exercise of its functions;
  - (b) for the retention by the body of any such fees payable to it;
  - (c) about the application by the body of such fees.

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- (2) The Regulations may, in particular, make provision—
- (a) for the body to be able to set such fees as appear to it to be sufficient to defray the expenses of the body exercising its functions, taking one year with another;
  - (b) for the setting of fees by the body to be subject to the approval of the Secretary of State.
- (3) The expenses referred to in sub-paragraph (2)(a) include any expenses incurred by the body on such staff, accommodation, services and other facilities as appear to it to be necessary or expedient for the proper exercise of its functions.

**Commencement Information**

**I375** [Sch. 11 para. 6](#) in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689, reg. 3\(b\)](#)

*Consultation*

- 7 The Regulations may make provision as to the circumstances and manner in which the body must consult others before exercising any function conferred on it by the Regulations.

**Commencement Information**

**I376** [Sch. 11 para. 7](#) in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689, reg. 3\(b\)](#)

*Training and other services*

- 8 (1) The Regulations may make provision authorising the body to provide training or other services to any person.
- (2) The Regulations may make provision authorising the body—
- (a) to charge for the provision of any such training or other services, and
  - (b) to calculate any such charge on the basis that it considers to be the appropriate commercial basis.

**Commencement Information**

**I377** [Sch. 11 para. 8](#) in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689, reg. 3\(b\)](#)

*Report and accounts*

- 9 (1) The Regulations must require the body, at least once in each 12 month period, to report to the Secretary of State on—
- (a) the exercise of the functions conferred on it by the Regulations, and
  - (b) such other matters as may be prescribed in the Regulations.

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- (2) The Regulations must require the Secretary of State to lay before Parliament a copy of each report received under this paragraph.
- (3) Unless section 394 of the Companies Act 2006 applies to the body (duty on every company to prepare individual accounts), the Regulations must provide that the Secretary of State may give directions to the body with respect to the preparation of its accounts.
- (4) Unless the body falls within sub-paragraph (5), the Regulations must provide that the Secretary of State may give directions to the body with respect to the audit of its accounts.
- (5) The body falls within this sub-paragraph if it is a company whose accounts—
  - (a) are required to be audited in accordance with Part 16 of the Companies Act 2006 (see section 475 of that Act), or
  - (b) are exempt from the requirements of that Part under section 482 of that Act (non-profit making companies subject to public sector audit).
- (6) The Regulations may provide that, whether or not section 394 of the Companies Act 2006 applies to the body, the Secretary of State may direct that any provisions of that Act specified in the directions are to apply to the body with or without modifications.

#### **Commencement Information**

**I378** [Sch. 11 para. 9](#) in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689, reg. 3\(b\)](#)

#### *Funding*

- 10 The Regulations may provide that the Secretary of State may make grants to the body.

#### **Commencement Information**

**I379** [Sch. 11 para. 10](#) in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689, reg. 3\(b\)](#)

#### *Financial penalties*

- 11 (1) This paragraph applies where the Regulations include provision enabling the body to impose a financial penalty on a person who is, or has been, authorised to act as an insolvency practitioner (see section 144(5)).
- (2) The Regulations—
    - (a) must include provision about how the body is to determine the amount of a penalty, and
    - (b) may, in particular, prescribe a minimum or maximum amount.
  - (3) The Regulations must provide that, unless the Secretary of State (with the consent of the Treasury) otherwise directs, income from penalties imposed by the body is to be paid into the Consolidated Fund.

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- (4) The Regulations may also, in particular—
- (a) include provision for a penalty imposed by the body to be enforced as a debt;
  - (b) prescribe conditions that must be met before any action to enforce a penalty may be taken.

**Commencement Information**

**I380** Sch. 11 para. 11 in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by S.I. 2015/1689, reg. 3(b)

*Status etc.*

- 12 The Regulations must provide that—
- (a) the body is not to be regarded as acting on behalf of the Crown, and
  - (b) its members, officers and employees are not to be regarded as Crown servants.

**Commencement Information**

**I381** Sch. 11 para. 12 in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by S.I. 2015/1689, reg. 3(b)

*Transfer schemes*

- 13 (1) This paragraph applies if the Regulations make provision designating a body (whether one established by the Regulations or one already in existence) in place of a body designated by earlier regulations under section 144; and those bodies are referred to as the “new body” and the “former body” respectively.
- (2) The Regulations may make provision authorising the Secretary of State to make a scheme (a “transfer scheme”) for the transfer of property, rights and liabilities from the former body to the new body.
- (3) The Regulations may provide that a transfer scheme may include provision—
- (a) about the transfer of property, rights and liabilities that could not otherwise be transferred;
  - (b) about the transfer of property acquired, and rights and liabilities arising, after the making of the scheme.
- (4) The Regulations may provide that a transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by the former body in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the former body in respect of anything transferred;

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- (d) make provision for references to the former body in an instrument or other document in respect of anything transferred to be treated as references to the new body;
  - (e) make provision for the shared ownership or use of property;
  - (f) if the TUPE regulations do not apply to in relation to the transfer, make provision which is the same or similar.
- (5) The Regulations must provide that, where the former body is an existing body, a transfer scheme may only make provision in relation to—
- (a) things done by or in relation to the former body in or in connection with the exercise of functions conferred on it by previous regulations under section 144, and
  - (b) functions of the body which are functions so conferred.
- (6) In sub-paragraph (4)(f), “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (7) In this paragraph—
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.

**Commencement Information**

**I382** [Sch. 11 para. 13](#) in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689, reg. 3\(b\)](#)

*Additional provision where body is unincorporated association*

- 14 (1) This paragraph applies where the body is an unincorporated association.
- (2) The Regulations must provide that 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 function conferred on the body by the Regulations.

**Commencement Information**

**I383** [Sch. 11 para. 14](#) in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689, reg. 3\(b\)](#)

**Status:**

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