



# Companies Act 2006

## 2006 CHAPTER 46

### PART 23

#### DISTRIBUTIONS

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

- C1** Pts. 1-39 modified (31.12.2020) by Regulation (EC) No. 2157/2001, Art. AAA1(3) (as inserted by [The European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1298), regs. 1, [97](#) (with regs. 140-145) (as amended by S.I. 2020/523, regs. 1(2), 5(a)-(f)); 2020 c. 1, Sch. 5 para. 1(1))
- C2** Pts. 1-39 (except for Pt. 7 and ss. 662-669), 45-47 extended (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011](#) (S.I. 2011/1265), art. 5(1), [Sch. 1 para. 2](#)
- C3** Pt. 23 excluded (1.10.2011) by [Postal Services Act 2011](#) (c. 5), ss. 8, 93, [Sch. 1 para. 18\(a\)](#); S.I. 2011/2329, [art. 3](#)

### CHAPTER 1

#### RESTRICTIONS ON WHEN DISTRIBUTIONS MAY BE MADE

##### *Introductory*

#### **829** Meaning of “distribution”

- (1) In this Part “distribution” means every description of distribution of a company's assets to its members, whether in cash or otherwise, subject to the following exceptions.
- (2) The following are not distributions for the purposes of this Part—
  - (a) an issue of shares as fully or partly paid bonus shares;
  - (b) the reduction of share capital—

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- (i) by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or
- (ii) by repaying paid-up share capital;
- (c) the redemption or purchase of any of the company's own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with Chapter 3, 4 or 5 of Part 18;
- (d) a distribution of assets to members of the company on its winding up.

#### Commencement Information

- I1** S. 829 wholly in force at 6.4.2008; s. 829 not in force at Royal Assent see s. 1300; s. 829 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

### *General rules*

#### **830 Distributions to be made only out of profits available for the purpose**

- (1) A company may only make a distribution out of profits available for the purpose.
- (2) A company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.
- (3) Subsection (2) has effect subject to sections 832 [<sup>F1</sup>, 833A] and 835 (investment companies [<sup>F2</sup> and Solvency 2 insurance companies]).

#### Textual Amendments

- F1** Word in [s. 830\(3\)](#) inserted (30.12.2016) by [The Companies Act 2006 \(Distributions of Insurance Companies\) Regulations 2016](#) (S.I. 2016/1194), regs. 1(2), [2\(2\)\(a\)](#)
- F2** Words in [s. 830\(3\)](#) substituted (30.12.2016) by [The Companies Act 2006 \(Distributions of Insurance Companies\) Regulations 2016](#) (S.I. 2016/1194), regs. 1(2), [2\(2\)\(b\)](#)

#### Commencement Information

- I2** S. 830 wholly in force at 6.4.2008; s. 830 not in force at Royal Assent see s. 1300; s. 830 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

#### **831 Net asset restriction on distributions by public companies**

- (1) A public company may only make a distribution—
  - (a) if the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves, and
  - (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.
- (2) For this purpose a company's “net assets” means the aggregate of the company's assets less the aggregate of its liabilities.

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- (3) “Liabilities” here includes—
- (a) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
  - (b) where the relevant accounts are IAS accounts, provisions of any kind.
- (4) A company's undistributable reserves are—
- (a) its share premium account;
  - (b) its capital redemption reserve;
  - (c) the amount by which its accumulated, unrealised profits (so far as not previously utilised by capitalisation) exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made);
  - (d) any other reserve that the company is prohibited from distributing—
    - (i) by any enactment (other than one contained in this Part), or
    - (ii) by its articles.
- The reference in paragraph (c) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.
- (5) A public company must not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.
- (6) Subsection (1) has effect subject to sections 832 and 835 (investment companies etc: distributions out of accumulated revenue profits).

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#### Commencement Information

- I3** S. 831 wholly in force at 6.4.2008; s. 831 not in force at Royal Assent see s. 1300; s. 831 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

*Distributions by investment companies <sup>[F3]</sup> or Solvency 2 insurance companies]*

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#### Textual Amendments

- F3** Words in s. 832 cross-heading inserted (30.12.2016) by [The Companies Act 2006 \(Distributions of Insurance Companies\) Regulations 2016](#) (S.I. 2016/1194), regs. 1(2), [2\(3\)](#)

### 832 Distributions by investment companies out of accumulated revenue profits

- (1) An investment company may make a distribution out of its accumulated, realised revenue profits if the following conditions are met.
- (2) It may make such a distribution only if, and to the extent that, its accumulated, realised revenue profits, so far as not previously utilised by a distribution or capitalisation, exceed its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made.
- (3) It may make such a distribution only—

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- (a) if the amount of its assets is at least equal to one and a half times the aggregate of its liabilities to creditors, and
  - (b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.
- (4) For this purpose a company's liabilities to creditors include—
- (a) in the case of Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
  - (b) in the case of IAS accounts, provisions for liabilities to creditors.
- (5) The following conditions must also be met—
- [<sup>F4</sup>(a) the company's shares must be shares admitted to trading on a [<sup>F5</sup>UK regulated market];]
  - (b) during the relevant period it must not have—
    - (i) <sup>F6</sup> .....
    - (ii) applied any unrealised profits <sup>F7</sup> . . . in paying up debentures or amounts unpaid on its issued shares;
  - (c) it must have given notice to the registrar under section 833(1) (notice of intention to carry on business as an investment company)—
    - (i) before the beginning of the relevant period, or
    - (ii) as soon as reasonably practicable after the date of its incorporation.
- (6) For the purposes of this section—
- (a) <sup>F8</sup> .....
  - (b) the “relevant period” is the period beginning with—
    - (i) the first day of the accounting reference period immediately preceding that in which the proposed distribution is to be made, or
    - (ii) where the distribution is to be made in the company's first accounting reference period, the first day of that period,
 and ending with the date of the distribution.
- (7) The company must not include any uncalled share capital as an asset in any accounts relevant for purposes of this section.

#### Textual Amendments

- F4** S. 832(5)(a) substituted (6.4.2012) by [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, **2(2)(a)**
- F5** Words in s. 832(5)(a) substituted (31.12.2020) by [The Companies, Limited Liability Partnerships and Partnerships \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/348\)](#), reg. 2, **Sch. 1 para. 12** (with Sch. 4 para. 3) (as amended by S.I. 2020/523, regs. 1(2), 20); 2020 c. 1, Sch. 5 para. 1(1)
- F6** S. 832(5)(b)(i) and following word omitted (6.4.2012) by virtue of [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, **2(2)(b)**
- F7** Words in s. 832(5)(b)(ii) omitted (6.4.2012) by virtue of [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, **2(2)(c)**
- F8** S. 832(6)(a) and following word omitted (6.4.2012) by virtue of [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, **2(3)**

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### Commencement Information

- I4** S. 832 wholly in force at 6.4.2008; s. 832 not in force at Royal Assent see s. 1300; s. 832 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

## 833 Meaning of “investment company”

- (1) In this Part an “investment company” means a public company that—
- (a) has given notice (which has not been revoked) to the registrar of its intention to carry on business as an investment company, and
  - (b) since the date of that notice has complied with the following [<sup>F9</sup>requirement].
- (2) [<sup>F10</sup>The requirement is]—
- (a) that the business of the company consists of investing its funds [<sup>F11</sup>in shares, land or other assets], with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;
  - (b) <sup>F12</sup> .....
  - (c) <sup>F12</sup> .....
  - (d) <sup>F12</sup> .....
- (3) <sup>F13</sup> .....
- (4) Notice to the registrar under this section may be revoked at any time by the company on giving notice to the registrar that it no longer wishes to be an investment company within the meaning of this section.
- (5) On giving such a notice, the company ceases to be such a company.

### Textual Amendments

- F9** Word in s. 833(1)(b) substituted (6.4.2012) by [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, [2\(4\)](#)
- F10** Words in s. 833(2) substituted (6.4.2012) by [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, [2\(5\)\(a\)](#)
- F11** Words in s. 833(2)(a) substituted (6.4.2012) by [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, [2\(5\)\(b\)](#)
- F12** S. 833(2)(b)(c)(d) omitted (6.4.2012) by virtue of [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, [2\(5\)\(c\)](#) (with reg. 3)
- F13** S. 833(3) omitted (6.4.2012) by virtue of [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, [2\(6\)](#)

### Commencement Information

- I5** S. 833 wholly in force at 6.4.2008; s. 833 not in force at Royal Assent see s. 1300; s. 833 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

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### **[<sup>F14</sup>833A] Distributions by insurance companies authorised under the Solvency 2 Directive**

- (1) This section applies in relation to any authorised insurance company carrying on long-term business that is authorised in accordance with Article 14 of the Solvency 2 Directive.
- (2) For the purposes of section 830(2), the realised profit or loss of the company for the period in respect of which its relevant accounts (within the meaning of section 836) are prepared is taken to be the amount given by the formula in subsection (4) (with a positive figure taken to be a realised profit and a negative figure taken to be a realised loss).
- (3) But the company's profits available for distribution are limited to an amount that does not exceed its accumulated profits (whether realised or not), so far as not previously utilised by distribution or capitalisation, less its accumulated losses (whether realised or not), so far as not previously written off in a reduction or reorganisation of capital duly made.
- (4) The formula is  $A - L - D$ ,  
 where—  
 "A" is the total value of the company's assets;  
 "L" is the total value of the company's liabilities; and  
 "D" is the total value of the items within subsection (5) relating to the company;  
 and, in each case, the value is to be determined as at the date of the company's balance sheet that forms part of the accounts mentioned in subsection (2).
- (5) The items within this subsection are—
  - (a) if the value of shares held by the company in a qualifying investment subsidiary exceeds the value of the consideration given by it for their acquisition, the amount of that excess;
  - (b) any asset of the company representing a surplus in a defined benefit pension scheme;
  - (c) if the value of the assets held by the company in a ring-fenced fund exceeds the value of the liabilities incurred by the company in respect of that fund, the amount of that excess;
  - (d) the amount of any liability of the company in respect of deferred tax shown in the company's balance sheet that relates to any asset within paragraph (a), (b) or (c);
  - (e) if—
    - (i) the company has permission under regulation 42 of the Solvency 2 Regulations 2015 to apply a matching adjustment to a relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of the company's life insurance or reinsurance obligations, and
    - (ii) the value of the portfolio of the company's assets assigned by the company to cover the best estimate exceeds the value of the portfolio of the company's life insurance or reinsurance obligations,
 the amount of that excess; and
  - (f) the following capital items of the company—
    - (i) paid-in ordinary share capital together with any related share premium account;

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- (ii) paid-in preference shares which are not liabilities of the company together with any related share premium account;
  - (iii) capital redemption reserve; and
  - (iv) any other reserve that the company is prohibited from distributing (ignoring this Part for this purpose).
- (6) So far as anything falls within more than one of the above paragraphs of subsection (5), its value is to be taken into account only once.
- (7) The company’s assets and liabilities must be valued in accordance with—
- (a) rules made by the Prudential Regulation Authority under Part 9A of the Financial Services and Markets Act 2000 implementing Articles 75 to 85, and 308b to 308e, of the Solvency 2 Directive; and
  - (b) Articles 7 to 61 of Commission Delegated Regulation (EU) 2015/35 supplementing that directive.
- (8) If the company carries on both long-term business and other insurance business—
- (a) this section is to be applied on the assumption that the company carries on only the long-term business; and
  - (b) the remainder of this Part is to be applied on the assumption that the company carries on only that other insurance business;
- and, in applying paragraph (a) or (b), such apportionments of amounts referable to the long-term business or other insurance business are to be made as are just and reasonable.
- (9) In this section—
- “best estimate”, “paid-in ordinary share capital”, “paid-in preference shares”, “relevant risk-free interest rate term structure” and “ring-fenced fund” have the same meaning as in the Solvency 2 Directive and any directly applicable regulations made under it;
  - “defined benefit pension scheme” means a pension scheme (as defined by section 1(5) of the Pension Schemes Act 1993) which is a defined benefits scheme within the meaning given by section 2 of the Pension Schemes Act 2015;
  - “long-term business” means business that consists of effecting or carrying out contracts of long-term insurance (and this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act);
  - “qualifying investment subsidiary” means an undertaking in which the company holds a participation within the meaning given by Article 13(20) of the Solvency 2 Directive and which is not held by the company as part of its portfolio of investments;
  - “Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).]

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#### Textual Amendments

**F14** S. 833A inserted (30.12.2016) by [The Companies Act 2006 \(Distributions of Insurance Companies\) Regulations 2016 \(S.I. 2016/1194\)](#), regs. 1(2), 2(4)

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### 834 Investment company: condition as to holdings in other companies

F15  
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#### Textual Amendments

**F15** S. 834 omitted (6.4.2012) by virtue of [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, 2(7)

### 835 Power to extend provisions relating to investment companies

F16  
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#### Textual Amendments

**F16** S. 835 omitted (6.4.2012) by virtue of [The Companies Act 2006 \(Amendment of Part 23\) \(Investment Companies\) Regulations 2012 \(S.I. 2012/952\)](#), regs. 1, 2(7)

## CHAPTER 2

### JUSTIFICATION OF DISTRIBUTION BY REFERENCE TO ACCOUNTS

#### *Justification of distribution by reference to accounts*

### 836 Justification of distribution by reference to relevant accounts

- (1) Whether a distribution may be made by a company without contravening this Part is determined by reference to the following items as stated in the relevant accounts—
  - (a) profits, losses, assets and liabilities;
  - (b) provisions of the following kinds—
    - (i) where the relevant accounts are Companies Act accounts, provisions of a kind specified for the purposes of this subsection by regulations under section 396;
    - (ii) where the relevant accounts are IAS accounts, provisions of any kind;
  - (c) share capital and reserves (including undistributable reserves).
- (2) The relevant accounts are the company's last annual accounts, except that—
  - (a) where the distribution would be found to contravene this Part by reference to the company's last annual accounts, it may be justified by reference to interim accounts, and
  - (b) where the distribution is proposed to be declared during the company's first accounting reference period, or before any accounts have been circulated in respect of that period, it may be justified by reference to initial accounts.
- (3) The requirements of—
  - section 837 (as regards the company's last annual accounts),
  - section 838 (as regards interim accounts), and
  - section 839 (as regards initial accounts),



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must be complied with, as and where applicable.

- (4) If any applicable requirement of those sections is not complied with, the accounts may not be relied on for the purposes of this Part and the distribution is accordingly treated as contravening this Part.

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**Commencement Information**

- I6** S. 836 wholly in force at 6.4.2008; s. 836 not in force at Royal Assent see s. 1300; s. 836 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

*Requirements applicable in relation to relevant accounts*

**837 Requirements where last annual accounts used**

- (1) The company's last annual accounts means the company's individual accounts—
- (a) that were last circulated to members in accordance with section 423 (duty to circulate copies of annual accounts and reports), or
  - <sup>F17</sup>(b) .....
- (2) The accounts must have been properly prepared in accordance with this Act, or have been so prepared subject only to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (3) Unless the company is exempt from audit and the directors take advantage of that exemption, the auditor must have made his report on the accounts.
- (4) If that report was qualified—
- (a) the auditor must have stated in writing (either at the time of his report or subsequently) whether in his opinion the matters in respect of which his report is qualified are material for determining whether a distribution would contravene this Part, and
  - (b) a copy of that statement must—
    - (i) in the case of a private company, have been circulated to members in accordance with section 423, or
    - (ii) in the case of a public company, have been laid before the company in general meeting.
- (5) An auditor's statement is sufficient for the purposes of a distribution if it relates to distributions of a description that includes the distribution in question, even if at the time of the statement it had not been proposed.

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**Textual Amendments**

- F17** S. 837(1)(b) omitted (with effect in accordance with reg. 1(4) of the amending S.I.) by virtue of [The Companies Act 2006 \(Strategic Report and Directors' Report\) Regulations 2013](#) (S.I. 2013/1970), reg. 1(2)(3), [Sch. para. 23](#)

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#### Commencement Information

- 17** S. 837 wholly in force at 6.4.2008; s. 837 not in force at Royal Assent see s. 1300; s. 837 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

### 838 Requirements where interim accounts used

- (1) Interim accounts must be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1).
- (2) Where interim accounts are prepared for a proposed distribution by a public company, the following requirements apply.
- (3) The accounts must have been properly prepared, or have been so prepared subject to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (4) “Properly prepared” means prepared in accordance with sections 395 to 397 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.
- (5) The balance sheet comprised in the accounts must have been signed in accordance with section 414.
- (6) A copy of the accounts must have been delivered to the registrar.

Any requirement of Part 35 of this Act as to the delivery of a certified translation into English of any document forming part of the accounts must also have been met.

#### Commencement Information

- 18** S. 838 wholly in force at 6.4.2008; s. 838 not in force at Royal Assent see s. 1300; s. 838 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

### 839 Requirements where initial accounts used

- (1) Initial accounts must be accounts that enable a reasonable judgment to be made as to the amounts of the items mentioned in section 836(1).
- (2) Where initial accounts are prepared for a proposed distribution by a public company, the following requirements apply.
- (3) The accounts must have been properly prepared, or have been so prepared subject to matters that are not material for determining (by reference to the items mentioned in section 836(1)) whether the distribution would contravene this Part.
- (4) “Properly prepared” means prepared in accordance with sections 395 to 397 (requirements for company individual accounts), applying those requirements with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period.

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- (5) The company's auditor must have made a report stating whether, in his opinion, the accounts have been properly prepared.
- (6) If that report was qualified—
  - (a) the auditor must have stated in writing (either at the time of his report or subsequently) whether in his opinion the matters in respect of which his report is qualified are material for determining whether a distribution would contravene this Part, and
  - [<sup>F18</sup>(b) a copy of that statement must have been laid before the company in general meeting.]
- (7) A copy of the accounts, of the auditor's report and of any auditor's statement must have been delivered to the registrar.

Any requirement of Part 35 of this Act as to the delivery of a certified translation into English of any of those documents must also have been met.

#### Textual Amendments

- F18** S. 839(6)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 260(4)** (with art. 10)

#### Commencement Information

- I9** S. 839 wholly in force at 6.4.2008; s. 839 not in force at Royal Assent see s. 1300; s. 839 in force at 6.4.2008 by [S.I. 2007/3495](#), **art. 3(1)(k)** (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

### *Application of provisions to successive distributions etc*

#### **840 Successive distributions etc by reference to the same accounts**

- (1) In determining whether a proposed distribution may be made by a company in a case where—
  - (a) one or more previous distributions have been made in pursuance of a determination made by reference to the same relevant accounts, or
  - (b) relevant financial assistance has been given, or other relevant payments have been made, since those accounts were prepared,the provisions of this Part apply as if the amount of the proposed distribution was increased by the amount of the previous distributions, financial assistance and other payments.
- (2) The financial assistance and other payments that are relevant for this purpose are—
  - (a) financial assistance lawfully given by the company out of its distributable profits;
  - (b) financial assistance given by the company in contravention of section 678 or 679 (prohibited financial assistance) in a case where the giving of that assistance reduces the company's net assets or increases its net liabilities;

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- (c) payments made by the company in respect of the purchase by it of shares in the company, except a payment lawfully made otherwise than out of distributable profits;
  - (d) payments of any description specified in section 705 (payments apart from purchase price of shares to be made out of distributable profits).
- (3) In this section “financial assistance” has the same meaning as in Chapter 2 of Part 18 (see section 677).
- (4) For the purpose of applying subsection (2)(b) in relation to any financial assistance—
- (a) “net assets” means the amount by which the aggregate amount of the company's assets exceeds the aggregate amount of its liabilities, and
  - (b) “net liabilities” means the amount by which the aggregate amount of the company's liabilities exceeds the aggregate amount of its assets,
- taking the amount of the assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given.
- (5) For this purpose a company's liabilities include any amount retained as reasonably necessary for the purposes of providing for any liability—
- (a) the nature of which is clearly defined, and
  - (b) which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

#### **Commencement Information**

**I10** S. 840 wholly in force at 6.4.2008; s. 840 not in force at Royal Assent see s. 1300; s. 840 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

## **CHAPTER 3**

### SUPPLEMENTARY PROVISIONS

#### *Accounting matters*

#### **841 Realised losses and profits and revaluation of fixed assets**

- (1) The following provisions have effect for the purposes of this Part.
- (2) The following are treated as realised losses—
- (a) in the case of Companies Act accounts, provisions of a kind specified for the purposes of this paragraph by regulations under section 396 (except revaluation provisions);
  - (b) in the case of IAS accounts, provisions of any kind (except revaluation provisions).
- (3) A “revaluation provision” means a provision in respect of a diminution in value of a fixed asset appearing on a revaluation of all the fixed assets of the company, or of all of its fixed assets other than goodwill.

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- (4) For the purpose of subsections (2) and (3) any consideration by the directors of the value at a particular time of a fixed asset is treated as a revaluation provided—
- (a) the directors are satisfied that the aggregate value at that time of the fixed assets of the company that have not actually been revalued is not less than the aggregate amount at which they are then stated in the company's accounts, and
  - (b) it is stated in a note to the accounts—
    - (i) that the directors have considered the value of some or all of the fixed assets of the company without actually revaluing them,
    - (ii) that they are satisfied that the aggregate value of those assets at the time of their consideration was not less than the aggregate amount at which they were then stated in the company's accounts, and
    - (iii) that accordingly, by virtue of this subsection, amounts are stated in the accounts on the basis that a revaluation of fixed assets of the company is treated as having taken place at that time.
- (5) Where—
- (a) on the revaluation of a fixed asset, an unrealised profit is shown to have been made, and
  - (b) on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period,
- an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for the depreciation of that asset over that period, if that profit had not been made, is treated as a realised profit made over that period.

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**Commencement Information**

**I11** S. 841 wholly in force at 6.4.2008; s. 841 not in force at Royal Assent see s. 1300; s. 841 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**842 Determination of profit or loss in respect of asset where records incomplete**

In determining for the purposes of this Part whether a company has made a profit or loss in respect of an asset where—

- (a) there is no record of the original cost of the asset, or
- (b) a record cannot be obtained without unreasonable expense or delay,

its cost is taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.

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**Commencement Information**

**I12** S. 842 wholly in force at 6.4.2008; s. 842 not in force at Royal Assent see s. 1300; s. 842 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

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### 843 Realised profits and losses of long-term insurance business <sup>[F19]</sup> of certain insurance companies]

<sup>[F20]</sup>(1) The provisions of this section have effect for the purposes of this Part as it applies in relation to an authorised insurance company carrying on long-term business, other than—

- (a) a person to whom section 833A applies; or
- (b) an insurance special purpose vehicle.]

(2) An amount included in the relevant part of the company's balance sheet that—

- (a) represents a surplus in the fund or funds maintained by it in respect of its long-term business, and
- (b) has not been allocated to policy holders or, as the case may be, carried forward unappropriated in accordance with asset identification rules made under <sup>[F21]</sup>Part 9A] of the Financial Services and Markets Act 2000 (c. 8),

is treated as a realised profit.

(3) For the purposes of subsection (2)—

- (a) the relevant part of the balance sheet is that part of the balance sheet that represents accumulated profit or loss;
- (b) a surplus in the fund or funds maintained by the company in respect of its long-term business means an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its long-term business, as shown by an actuarial investigation.

(4) A deficit in the fund or funds maintained by the company in respect of its long-term business is treated as a realised loss.

For this purpose a deficit in any such fund or funds means an excess of the liabilities of the company attributable to its long-term business over the assets representing that fund or those funds, as shown by an actuarial investigation.

(5) Subject to subsections (2) and (4), any profit or loss arising in the company's long-term business is to be left out of account.

(6) For the purposes of this section an “actuarial investigation” means an investigation made into the financial condition of an authorised insurance company in respect of its long-term business—

- (a) carried out once in every period of twelve months in accordance with rules made under <sup>[F22]</sup>Part 9A] of the Financial Services and Markets Act 2000, or
- (b) carried out in accordance with a requirement imposed under section 166 of that Act,

by an actuary appointed as actuary to the company.

(7) In this section “long-term business” means business that consists of effecting or carrying out contracts of long-term insurance.

This definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

<sup>[F23]</sup>(8) In this section “ insurance special purpose vehicle ” means a special purpose vehicle within the meaning of <sup>[F24]</sup>Article 13(26) of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)] . ]

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#### Textual Amendments

- F19** Words in s. 843 heading inserted (30.12.2016) by [The Companies Act 2006 \(Distributions of Insurance Companies\) Regulations 2016](#) (S.I. 2016/1194), regs. 1(2), **2(5)(a)**
- F20** S. 843(1) substituted (30.12.2016) by [The Companies Act 2006 \(Distributions of Insurance Companies\) Regulations 2016](#) (S.I. 2016/1194), regs. 1(2), **2(5)(b)**
- F21** Words in s. 843(2)(b) substituted (1.4.2013) by [Financial Services Act 2012](#) (c. 21), s. 122(3), **Sch. 18 para. 117(2)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, **Sch.**
- F22** Words in s. 843(6)(a) substituted (1.4.2013) by [Financial Services Act 2012](#) (c. 21), s. 122(3), **Sch. 18 para. 117(3)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, **Sch.**
- F23** S. 843(8) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(3), **Sch. 3 para. 2(1)(b)**
- F24** Words in s. 843(8) substituted (1.1.2016) by [The Solvency 2 Regulations 2015](#) (S.I. 2015/575), reg. 1(2), **Sch. 1 para. 25**

#### Commencement Information

- I13** S. 843 wholly in force at 6.4.2008; s. 843 not in force at Royal Assent see s. 1300; s. 843 in force at 6.4.2008 by [S.I. 2007/3495](#), **art. 3(1)(k)** (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

## 844 Treatment of development costs

- (1) Where development costs are shown or included as an asset in a company's accounts, any amount shown or included in respect of those costs is treated—
- for the purposes of section 830 (distributions to be made out of profits available for the purpose) as a realised loss, and
  - for the purposes of section 832 (distributions by investment companies out of accumulated revenue profits) as a realised revenue loss.

This is subject to the following exceptions.

- (2) Subsection (1) does not apply to any part of that amount representing an unrealised profit made on revaluation of those costs.
- (3) Subsection (1) does not apply if—
- there are special circumstances in the company's case justifying the directors in deciding that the amount there mentioned is not to be treated as required by subsection (1),
  - it is stated—
    - in the case of Companies Act accounts, in the note required by regulations under section 396 as to the reasons for showing development costs as an asset, or
    - in the case of IAS accounts, in any note to the accounts,that the amount is not to be so treated, and
  - the note explains the circumstances relied upon to justify the decision of the directors to that effect.

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#### Commencement Information

**I14** S. 844 wholly in force at 6.4.2008; s. 844 not in force at Royal Assent see s. 1300; s. 844 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

### *Distributions in kind*

#### **845 Distributions in kind: determination of amount**

- (1) This section applies for determining the amount of a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by a company of a non-cash asset where—
  - (a) at the time of the distribution the company has profits available for distribution, and
  - (b) if the amount of the distribution were to be determined in accordance with this section, the company could make the distribution without contravening this Part.
- (2) The amount of the distribution (or the relevant part of it) is taken to be—
  - (a) in a case where the amount or value of the consideration for the disposition is not less than the book value of the asset, zero;
  - (b) in any other case, the amount by which the book value of the asset exceeds the amount or value of any consideration for the disposition.
- (3) For the purposes of subsection (1)(a) the company's profits available for distribution are treated as increased by the amount (if any) by which the amount or value of any consideration for the disposition exceeds the book value of the asset.
- (4) In this section “book value”, in relation to an asset, means—
  - (a) the amount at which the asset is stated in the relevant accounts, or
  - (b) where the asset is not stated in those accounts at any amount, zero.
- (5) The provisions of Chapter 2 (justification of distribution by reference to accounts) have effect subject to this section.

#### Commencement Information

**I15** S. 845 wholly in force at 6.4.2008; s. 845 not in force at Royal Assent see s. 1300; s. 845 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

#### **846 Distributions in kind: treatment of unrealised profits**

- (1) This section applies where—
  - (a) a company makes a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by the company of a non-cash asset, and
  - (b) any part of the amount at which that asset is stated in the relevant accounts represents an unrealised profit.



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- (2) That profit is treated as a realised profit—
- (a) for the purpose of determining the lawfulness of the distribution in accordance with this Part (whether before or after the distribution takes place), and
  - (b) for the purpose of the application, in relation to anything done with a view to or in connection with the making of the distribution, of any provision of regulations under section 396 under which only realised profits are to be included in or transferred to the profit and loss account.

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**Commencement Information**

**I16** S. 846 wholly in force at 6.4.2008; s. 846 not in force at Royal Assent see s. 1300; s. 846 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

*Consequences of unlawful distribution*

**847 Consequences of unlawful distribution**

- (1) This section applies where a distribution, or part of one, made by a company to one of its members is made in contravention of this Part.
- (2) If at the time of the distribution the member knows or has reasonable grounds for believing that it is so made, he is liable—
- (a) to repay it (or that part of it, as the case may be) to the company, or
  - (b) in the case of a distribution made otherwise than in cash, to pay the company a sum equal to the value of the distribution (or part) at that time.
- (3) This is without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him.
- (4) This section does not apply in relation to—
- (a) financial assistance given by a company in contravention of section 678 or 679, or
  - (b) any payment made by a company in respect of the redemption or purchase by the company of shares in itself.

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**Commencement Information**

**I17** S. 847 wholly in force at 6.4.2008; s. 847 not in force at Royal Assent see s. 1300; s. 847 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

*Other matters*

**848 Saving for certain older provisions in articles**

- (1) Where immediately before the relevant date a company was authorised by a provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares,

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that provision continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.

- (2) For this purpose the relevant date is—
- (a) for companies registered in Great Britain, 22nd December 1980;
  - (b) for companies registered in Northern Ireland, 1st July 1983.

**Commencement Information**

**I18** S. 848 wholly in force at 6.4.2008; s. 848 not in force at Royal Assent see s. 1300; s. 848 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**849 Restriction on application of unrealised profits**

A company must not apply an unrealised profit in paying up debentures or any amounts unpaid on its issued shares.

**Commencement Information**

**I19** S. 849 wholly in force at 6.4.2008; s. 849 not in force at Royal Assent see s. 1300; s. 849 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**850 Treatment of certain older profits or losses**

- (1) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the relevant date is realised or unrealised, they may treat the profit as realised.
- (2) Where the directors of a company, after making all reasonable enquiries, are unable to determine whether a particular loss made before the relevant date is realised or unrealised, they may treat the loss as unrealised.
- (3) For the purposes of this section the relevant date is—
  - (a) for companies registered in Great Britain, 22nd December 1980;
  - (b) for companies registered in Northern Ireland, 1st July 1983.

**Commencement Information**

**I20** S. 850 wholly in force at 6.4.2008; s. 850 not in force at Royal Assent see s. 1300; s. 850 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**851 Application of rules of law restricting distributions**

- (1) Except as provided in this section, the provisions of this Part are without prejudice to any rule of law restricting the sums out of which, or the cases in which, a distribution may be made.

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- (2) For the purposes of any rule of law requiring distributions to be paid out of profits or restricting the return of capital to members—
- (a) section 845 (distributions in kind: determination of amount) applies to determine the amount of any distribution or return of capital consisting of or including, or treated as arising in consequence of the sale, transfer or other disposition by a company of a non-cash asset; and
  - (b) section 846 (distributions in kind: treatment of unrealised profits) applies as it applies for the purposes of this Part.
- (3) In this section references to distributions are to amounts regarded as distributions for the purposes of any such rule of law as is referred to in subsection (1).

**Commencement Information**

**I21** S. 851 wholly in force at 6.4.2008; s. 851 not in force at Royal Assent see s. 1300; s. 851 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**852 Saving for other restrictions on distributions**

The provisions of this Part are without prejudice to any enactment, or any provision of a company's articles, restricting the sums out of which, or the cases in which, a distribution may be made.

**Commencement Information**

**I22** S. 852 wholly in force at 6.4.2008; s. 852 not in force at Royal Assent see s. 1300; s. 852 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

**853 Minor definitions**

- (1) The following provisions apply for the purposes of this Part.
- (2) References to profit or losses of any description—
- (a) are to profits or losses of that description made at any time, and
  - (b) except where the context otherwise requires, are to profits or losses of a revenue or capital character.
- (3) “Capitalisation”, in relation to a company's profits, means any of the following operations (whenever carried out)—
- (a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares, or
  - (b) transferring the profits to capital redemption reserve.
- (4) References to “realised profits” and “realised losses”, in relation to a company's accounts, are to such profits or losses of the company as fall to be treated as realised in accordance with principles generally accepted at the time when the accounts are

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prepared, with respect to the determination for accounting purposes of realised profits or losses.

- (5) Subsection (4) is without prejudice to—
- (a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice, or
  - (b) any specific provision for the treatment of profits or losses of any description as realised.
- (6) “Fixed assets” means assets of a company which are intended for use on a continuing basis in the company's activities.

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#### **Commencement Information**

**I23** S. 853 wholly in force at 6.4.2008; s. 853 not in force at Royal Assent see s. 1300; s. 853 in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(k\)](#) (with savings in [arts. 7, 12](#) and subject to transitional adaptations in [Sch. 1 paras. 14-20](#) and with savings in [Sch. 4 paras. 33-35](#))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act amendment to earlier affecting provision S.I. 1989/638, Sch. 4 by [S.I. 2024/410 Sch. 2 para. 1](#)
- Act amendment to earlier affecting provision S.I. 2008/373 reg. 11(1) by [S.I. 2013/1971 reg. 9\(a\)](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)
- Act amendment to earlier affecting provision S.I. 2008/373 reg. 3(4) by [S.I. 2013/1971 reg. 4](#) (This amendment not applied to legislation.gov.uk. Amending Regulations revoked (1.10.2013) without ever being in force by S.I. 2013/2224, reg. 2)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 479A(2)(c)(zi) inserted by [S.I. 2019/177 reg. 4\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 4 substituted by regs. 4, 4A immediately before IP completion day by S.I. 2019/1392, regs. 1(2), 4)
- s. 479B(a)(iii) amendment to earlier affecting provision S.I.2008/1991 reg.34 by [S.R. 2024/78 reg. 31\(4\)](#)
- s. 479B(a)(iii) amendment to earlier affecting provision S.I.2008/1991 reg.34A by [S.R. 2024/78 reg. 31\(5\)](#)
- s. 1087A-1807C applied by S.I. 2009/2436, Sch. 1 para. 20(1)(ca) (as substituted) by [S.I. 2024/410 Sch. 2 para. 5\(d\)\(ii\)](#)
- Sch. 10 para. 6(2D) inserted by [S.I. 2019/177 reg. 28\(e\)](#) (This amendment not applied to legislation.gov.uk. Reg. 28(e) omitted immediately before IP completion day by virtue of S.I. 2020/523, regs. 1(2), 14(e)(iv))
- Sch. 10 para. 7(2A) inserted by [S.I. 2019/177 reg. 29\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 29 substituted immediately before IP completion day by S.I. 2020/523, regs. 1(2), 14(f))