

SCHEDULE 4

CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF THE COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY ENTERPRISE) ACT 2004

1. In section 26 (community interest companies), in subsection (3)(a) for “a charity” substitute “an English charity or a Northern Ireland charity”.
2. In section 32 (memorandum and articles)—
 - (a) in subsection (2), for “Section 7(1) of the Companies Act 1985” substitute “Section 7(1) of the 1985 Act or Article 18(1) of the 1986 Order”;
 - (b) in subsection (6), for “section 4 of the Companies Act 1985” substitute “section 4 of the 1985 Act or Article 15 of the 1986 Order”.
3. In section 33 (names), in subsection (5) for “Section 25 of the Companies Act 1985” substitute “Section 25 of the 1985 Act or Article 35 of the 1986 Order”.
4. In section 34 (community interest company reports)—
 - (a) in subsection (2), for “Section 242(1) of the Companies Act 1985” substitute “Section 242(1) of the 1985 Act or Article 250(1) of the 1986 Order”;
 - (b) in subsection (3)(c) for “the Companies Act 1985” substitute “the 1985 Act or the 1986 Order”.
5. In section 35(5) (definition of “community”) for “Great Britain” substitute “the United Kingdom”.
6. In section 36 (new companies)—
 - (a) in subsections (1) and (5)(b), for “section 10 of the Companies Act 1985” substitute “section 10 of the 1985 Act or Article 21 of the 1986 Order”;
 - (b) in subsection (7), for “section 12 of the Companies Act 1985” substitute “section 12 of the 1985 Act or Article 23 of the 1986 Order”;
 - (c) in subsection (8), for “section 13 of the Companies Act 1985” substitute “section 13 of the 1985 Act or Article 24 of the 1986 Order”.
7. In section 37 (existing companies: requirements)—
 - (a) in subsection (1)(b) for “the Companies Act 1985” substitute “the 1985 Act or the 1986 Order”;
 - (b) in subsection (2) for “Section 380(1) of the Companies Act 1985” substitute “Section 380(1) of the 1985 Act or Article 388(1) of the 1986 Order”;
 - (c) in the opening words of subsection (3), for “section 4 or 17 of the Companies Act 1985” substitute “section 4 or 17 of the 1985 Act or Article 15 or 28 of the 1986 Order”;
 - (d) in subsection (3)(b), for “section 380(1)” substitute “section 380(1) of the 1985 Act or Article 388(1) of the 1986 Order”;
 - (e) in subsection (4)—
 - (i) for “section 5 of the Companies Act 1985” substitute “section 5 of the 1985 Act or Article 16 of the 1986 Order”, and

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- (ii) omit “under section 4 or 17”;
 - (f) in subsection (5), for “section 5 of that Act” substitute “section 5 of the 1985 Act or Article 16 of the 1986 Order”.
- 8.** In section 38 (existing companies: decisions etc), in subsections (6) and (8) for “section 28(6) of the Companies Act 1985” substitute “section 28(6) of the 1985 Act or Article 38(6) of the 1986 Order”.
- 9.** In section 39 (existing companies: charities)—
- (a) in the heading, before “charities” insert “English”;
 - (b) for “charitable company”, wherever occurring, substitute “company that is an English charity”;
 - (c) in subsection (2), for “the Companies Act 1985” substitute “the 1985 Act”;
 - (d) omit subsection (4).
- 10.** In section 40 (existing companies: Scottish charities)—
- (a) for “Scottish charitable company”, wherever occurring, substitute “company that is a Scottish charity”;
 - (b) in subsections (2) and (5), for “the Companies Act 1985” substitute “the 1985 Act”;
 - (c) omit subsection (8).
- 11.** After section 40 insert—

“Existing companies: Northern Ireland charities

40A.—(1) A company that is a Northern Ireland charity may not become a community interest company.

(2) If a company that is a Northern Ireland charity purports by special resolution to change its name to comply with section 33, the Commissioners of Her Majesty’s Revenue and Customs may apply to the High Court for an order quashing any altered certificate of incorporation under Article 38(6) of the 1986 Order.”.

- 12.** In section 43 (audit)—
- (a) in subsection (2), after “section 25 of the Companies Act 1989” insert “or Article 28 of the Companies (Northern Ireland) Order 1990”;
 - (b) in subsection (3)—
 - (i) for “Sections 389A and 389B of the Companies Act 1985” substitute “Sections 389A and 389B of the 1985 Act or Articles 397A and 397B of the 1986 Order”, and
 - (ii) for “Chapter 5 of Part 11 of that Act” substitute “Chapter 5 of Part 11 of the 1985 Act or Chapter 5 of Part 12 of the 1986 Order”.
- 13.** In section 45 (appointment of director)—
- (a) in subsection (8), for “section 288(2) of the Companies Act 1985” substitute “section 288(2) of the 1985 Act or Article 296(2) of the 1986 Order”;
 - (b) in subsection (9) after “section 288(2)” insert “or Article 296(2)”.
- 14.** In section 46 (removal of director)—
- (a) in subsection (10)(a), after “England and Wales” insert “or Northern Ireland”;
 - (b) in subsection (12), for “section 288(2) of the Companies Act 1985” substitute “section 288(2) of the 1985 Act or Article 296(2) of the 1986 Order”.

15. In section 47 (appointment of manager), in subsection (6)(a) after “section 51 of the Insolvency Act 1986” insert “(power to appoint receiver under law of Scotland)”.

16. In section 48 (property), in subsection (10) for the words following “may be instituted” substitute—

“—

- (a) in England and Wales, only with the consent of the Regulator or the Director of Public Prosecutions;
- (b) in Northern Ireland, only with the consent of the Regulator or the Director of Public Prosecutions for Northern Ireland.”.

17. In section 51 (dissolution and striking off)—

- (a) in subsection (1), for “section 651 of the Companies Act 1985” substitute “section 651 of the 1985 Act or Article 602 of the 1986 Order”;
- (b) in subsection (2)—
 - (i) for “section 652 of the Companies Act 1985” substitute “section 652 of the 1985 Act or Article 603 of the 1986 Order”, and
 - (ii) for “section 653(2) of that Act” substitute “section 653(2) of the 1985 Act or Article 604(2) of the 1986 Order”;
- (c) in subsection (3)—
 - (i) for “section 652A of the Companies Act 1985” substitute “section 652A of the 1985 Act or Article 603A of the 1986 Order”, and
 - (ii) for “section 652B(6) of that Act” substitute “section 652B(6) of the 1985 Act or Article 603B(6) of the 1986 Order”.

18. In section 52 (re-registration)—

- (a) in subsection (1), for “section 49 of the Companies Act 1985” substitute “section 49 of the 1985 Act or Article 59 of the 1986 Order”;
- (b) in subsection (2)—
 - (i) for “section 43 of the Companies Act 1985” substitute “section 43 of the 1985 Act or Article 53 of the 1986 Order”,
 - (ii) for “section 53 of that Act” substitute “section 53 of the 1985 Act or Article 63 of the 1986 Order”, and
 - (iii) for “section 47(1)(b) or 55(1)(b) of that Act” substitute “section 47(1)(b) or 55(1)(b) of the 1985 Act or Article 57(1)(b) or 65(1)(b) of the 1986 Order”.

19.—(1) Section 54 (becoming a charity or a Scottish charity: requirements) is amended as follows.

(2) In the heading and in the opening words of subsection (1), omit “or a Scottish charity”.

(3) In subsection (1)(b), for “the Companies Act 1985” substitute “the 1985 Act or the 1986 Order”.

(4) In subsection (2), for “Section 380(1) of the Companies Act 1985” substitute “section 380(1) of the 1985 Act or Article 388(1) of the 1986 Order”.

(5) In subsection (3)—

- (a) in the opening words, for “section 4 or 17 of the Companies Act 1985” substitute “section 4 or 17 of the 1985 Act or Article 15 or 28 of the 1986 Order”, and

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- (b) in paragraph (b), for “section 380(1)” substitute “section 380(1) of the 1985 Act or Article 388(1) of the 1986 Order”.
- (6) In subsection (4)—
 - (a) for “section 5 of the Companies Act 1985” substitute “section 5 of the 1985 Act or Article 16 of the 1986 Order”, and
 - (b) omit “under section 4 or 17”.
- (7) In subsection (5), for “section 5 of that Act” substitute “section 5 of the 1985 Act or Article 16 of the 1986 Order”.
- (8) In subsection (6), for paragraph (b) substitute—
 - “(b) the statement required by subsection (7), (8) or (8A).”.
- (9) For subsections (7) and (8) substitute—
 - “(7) The statement required where the company is to become an English charity is a statement by the Charity Commissioners that, in their opinion, if the special resolutions take effect and the company ceases to be a community interest company, the company will be an English charity and will not be an exempt charity.
 - “Exempt charity” here has the same meaning as in the Charities Act 1993(1) (see section 96 of that Act).
 - (8) The statement required where the company is to become a Scottish charity is a statement by the Scottish Charity Regulator that, if the special resolutions take effect and the company ceases to be a community interest company, the company will be entered in the Scottish Charity Register.”.
- (10) After subsection (8) insert—
 - “(8A) The statement required where the company is to become a Northern Ireland charity is a statement by the Commissioners of Her Majesty’s Revenue and Customs that the company has claimed exemption under section 505(1) of the Income and Corporation Taxes Act 1988(2).”.
- (11) Omit subsection (9).
- 20.** In section 55 (becoming a charity or a Scottish charity: decisions etc)—
 - (a) in the heading, omit “or a Scottish charity”;
 - (b) in subsection (6), for “section 28(6) of the Companies Act 1985” substitute “section 28(6) of the 1985 Act or Article 38(6) of the 1986 Order”.
- 21.** In section 56 (becoming an industrial and provident society), in subsection (1) after “section 53 of the Industrial and Provident Societies Act 1965(3)” insert “or section 62 of the Industrial and Provident Societies Act (Northern Ireland) 1969(4)”.
- 22.** In section 58 (extension of provisions about registrar etc)—
 - (a) for “Part 24 of the Companies Act 1985” substitute “Part 24 of the 1985 Act or Part 24 of the 1986 Order”, and
 - (b) for “Part 25 of that Act” substitute “Part 25 of the 1985 Act or Part 25 of the 1986 Order”.
- 23.** In section 59 (information), in subsection (9) for the words following “may be instituted” substitute—
 - “__

(1) 1999 c.10.
(2) 1988 c.1.
(3) 1965 c.12.
(4) 1969 c.24.

- (a) in England and Wales, only with the consent of the Regulator or the Director of Public Prosecutions;
- (b) in Northern Ireland, only with the consent of the Regulator or the Director of Public Prosecutions for Northern Ireland.”.

24.—(1) In section 63 (interpretation), subsection (1) is amended as follows.

(2) In the definition of “administrative receiver”, for the words following “has the meaning given” substitute—

“—

- (a) in England and Wales or Scotland, by section 251 of the Insolvency Act 1986, and
- (b) in Northern Ireland, by Article 5 of the Insolvency (Northern Ireland) Order 1989(5);”.

(3) For the definition of “charity” substitute—

““charity” means an English charity, a Scottish charity or a Northern Ireland charity, as defined below;”.

(4) In the appropriate places insert—

““the Gazette” has the meaning given by section 1173 of the Companies Act 2006;”

““English charity” means a charity within the meaning of the Charities Act 1993 (see section 96 of that Act);”

““Northern Ireland charity” means a charity within the meaning of the Charities Act (Northern Ireland) 1964(6) (see section 35 of that Act);”

““the 1985 Act” means the Companies Act 1985;”

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

(5) For subsection (2) of that section substitute—

“(2) In England and Wales or Scotland, any expression used in this Part and in the 1985 Act has the same meaning in this Part as in that Act.

(3) In Northern Ireland, any expression used in this Part and in the 1986 Order has the same meaning in this Part as in that Order.”.

25. In section 66 (extent), in subsection (2) after “18” insert “and Part 2”.

26.—(1) Schedule 7 (community interest companies: investigations) is amended as follows.

(2) In paragraph 3 (use of information as evidence), in sub-paragraph (3) for the words from “an offence under” to the end substitute—

“(a) an offence under paragraph 5 below (false information), or

(b) an offence under section 5 of the Perjury Act 1911, section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 or Article 10 of the Perjury (Northern Ireland) Order 1979 (false statement made otherwise than on oath).”.

(3) In paragraph 5(1) (false information), omit the words from “but a prosecution” to the end and after that sub-paragraph insert—

“(1A) A prosecution for an offence under sub-paragraph (1) may be instituted—

- (a) in England and Wales, only with the consent of the Director of Public Prosecutions;

(5) [S.I. 1989/2405 \(N.I. 19\)](#).

(6) [1964 c.33 \(N.I.\)](#).

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(b) in Northern Ireland, only with the consent of the Director of Public Prosecutions for Northern Ireland.”

(4) In paragraph 5(2)(c), after “Scotland” insert “or Northern Ireland”.