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STATUTORY INSTRUMENTS

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**1990 No. 593**

**The Companies (Northern Ireland) Order 1990**

**PART III**

**ELIGIBILITY FOR APPOINTMENT AS COMPANY AUDITOR**

*Supplementary provisions*

**Fees**

**47.**—(1) An applicant for a recognition order under this Part shall pay such fee in respect of his application as may be prescribed; and no application shall be regarded as duly made unless this paragraph is complied with.

(2) Every recognised supervisory or qualifying body shall pay such periodical fees to the Department as may be prescribed.

(3) In this Article “prescribed” means prescribed by regulations made by the Department.

(4) Regulations under this Article shall be subject to negative resolution.

(5) Fees received by the Department by virtue of this Part shall be paid into the Consolidated Fund.

**Delegation of functions of Department**

**48.**—(1) The Department may by order (a “delegation order”) establish a body corporate to exercise its functions under this Part.

(2) A delegation order has the effect of transferring to the body established by it, subject to such exceptions and reservations as may be specified in the order, all the functions of the Department under this Part except—

(a) such functions under Part I of Schedule 14 (prevention of restrictive practices) as are excepted by regulations under Article 49, and

(b) the Department’s functions in relation to the body itself;

and the order may also confer on the body such other functions supplementary or incidental to those transferred as appear to the Department to be appropriate.

(3) Any transfer of the functions under the following provisions shall be subject to the reservation that they remain exercisable concurrently by the Department—

(a) Article 40 (power to call for information), and

(b) Article 42 (directions to comply with international obligations);

and any transfer of the function of refusing to approve an overseas qualification, or withdrawing such approval, on the grounds referred to in Article 36(3) (lack of reciprocity) shall be subject to the reservation that the function is exercisable only with the consent of the Department.

(4) A delegation order may be amended or, if it appears to the Department that it is no longer in the public interest that the order should remain in force, revoked by a further order under this Article.

(5) Where functions are transferred or resumed, the Department may by order confer or, as the case may be, take away such other functions supplementary or incidental to those transferred or resumed as appear to it to be appropriate.

(6) The provisions of Schedule 13 have effect with respect to the status, constitution and proceedings of a body established by a delegation order, the exercise by it of certain functions transferred to it and other supplementary matters.

(7) An order which has the effect of transferring or resuming any functions shall not be made unless a draft of it has been laid before and approved by a resolution of the Assembly; and any other description of order shall be subject to negative resolution.

### **Restrictive practices**

**49.**—(1) The provisions of Schedule 14 have effect with respect to certain matters relating to restrictive practices and competition law.

(2) The Department may make provision by regulations as to the discharge of the functions under paragraphs 1 to 7 of that Schedule when a delegation order is in force.

(3) The regulations may—

- (a) except any function from the effect of the delegation order,
- (b) modify any of the provisions mentioned in paragraph (2), and
- (c) impose such duties on the body established by the delegation order, the Department and Director General of Fair Trading as appear to the Department to be appropriate.

(4) The regulations shall contain such provision as appears to the Department to be necessary or expedient for reserving to it the decision—

- (a) to refuse recognition on the ground mentioned in paragraph 1(3) of that Schedule, or
- (b) to exercise the powers conferred by paragraph 6 of that Schedule.

(5) For that purpose the regulations may—

- (a) prohibit the body from granting a recognition order without the leave of the Department, and
- (b) empower the Department to direct the body to exercise its powers in such manner as may be specified in the direction.

(6) Regulations under this Article shall be subject to negative resolution.

### **Exemption from liability for damages**

**50.**—(1) Neither a recognised supervisory body, nor any of its officers or employees or members of its governing body, shall be liable in damages for anything done or omitted in the discharge or purported discharge of functions to which this paragraph applies, unless the act or omission is shown to have been in bad faith.

(2) Paragraph (1) applies to the functions of the body so far as relating to, or to matters arising out of—

- (a) such rules, practices, powers and arrangements of the body to which the requirements of Part II of Schedule 11 apply, or
- (b) the obligations with which paragraph 16 of that Schedule requires the body to comply,
- (c) any guidance issued by the body, or

(d) the obligations to which the body is subject by virtue of this Part.

(3) Neither a body established by a delegation order, nor any of its members, officers or employees, shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions exercisable by virtue of an order under Article 48, unless the act or omission is shown to have been in bad faith.

### **Service of notices**

**51.**—(1) This Article has effect in relation to any notice, direction or other document required or authorised by or under this Part to be given to or served on any person other than the Department.

(2) Any such document may be given to or served on the person in question—

- (a) by delivering it to him,
- (b) by leaving it at his proper address, or
- (c) by sending it by post to him at that address.

(3) Any such document may—

- (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body;
- (b) in the case of a partnership, be given to or served on any partner;
- (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association.

(4) For the purposes of this Article, section 24(1) of the Interpretation Act (Northern Ireland) 1954(1) applies with the omission of the word “registering” and the substitution of the words “proper address” for the words “usual or last known place of abode or business”.

(5) For the purposes of this Article and section 24(1) of the Interpretation Act (Northern Ireland) 1954 (service of documents by post) in its application to this Article, the proper address of any person is his last known address (whether of his residence or of a place where he carries on business or is employed) and also—

- (a) in the case of a person who is eligible under the rules of a recognised supervisory body for appointment as company auditor and who does not have a place of business in the United Kingdom, the address of that body;
- (b) in the case of a body corporate, its secretary or its clerk, the address of its registered or principal office in the United Kingdom;
- (c) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom.

### **Power to make consequential amendments**

**52.**—(1) The Department may by regulations make such amendments of statutory provisions as appear to it to be necessary or expedient in consequence of the provisions of this Part having effect in place of Article 397 of the 1986 Order.

(2) That power extends to making such amendments as appear to the Department necessary or expedient of—

- (a) statutory provisions referring by name to the bodies of accountants recognised for the purposes of Article 397(1)(a) of the 1986 Order, and
- (b) statutory provisions making with respect to other statutory auditors provision as to the matters dealt with in relation to company auditors by Article 397 of the 1986 Order.

- (3) The provision which may be made with respect to other statutory auditors includes provision as to—
- (a) eligibility for the appointment,
  - (b) the effect of appointing a partnership which is not a legal person and the manner of exercise of the auditor's rights in such a case, and
  - (c) ineligibility on the ground of lack of independence or any other ground.
- (4) The regulations may contain such supplementary, incidental and transitional provision as appears to the Department to be necessary or expedient.
- (5) The Department shall not make regulations under this Article with respect to any statutory auditors without the consent of—
- (a) the Department responsible for their appointment or responsible for the body or person by, or in relation to whom, they are appointed, or
  - (b) if there is no such Department, the person by whom they are appointed.
- (6) In this Article a “statutory auditor” means a person appointed auditor in pursuance of any statutory provision authorising or requiring the appointment of an auditor or auditors.
- (7) Regulations under this Article shall be subject to negative resolution.

#### **Power to make provision in consequence of changes affecting accountancy bodies**

- 53.**—(1) The Department may by regulations make such amendments of statutory provisions as appear to it to be necessary or expedient in consequence of any change of name, merger or transfer of engagements affecting—
- (a) a recognised supervisory or qualifying body under this Part, or
  - (b) a body of accountants referred to in, or approved, authorised or otherwise recognised for the purposes of, any other statutory provision.
- (2) Regulations under this Article shall be subject to negative resolution.

#### **Meaning of “associate”**

- 54.**—(1) In this Part “associate”, in relation to a person, shall be construed as follows.
- (2) In relation to an individual “associate” means—
- (a) that individual's spouse or minor child or step-child,
  - (b) any body corporate of which that individual is a director, and
  - (c) any employee or partner of that individual.
- (3) In relation to a body corporate “associate” means—
- (a) any body corporate of which that body is a director,
  - (b) any body corporate in the same group as that body, and
  - (c) any employee or partner of that body or of any body corporate in the same group.
- (4) In relation to a Scottish firm, or a partnership constituted under the law of any other country or territory in which a partnership is a legal person, “associate” means—
- (a) any body corporate of which the firm is a director,
  - (b) any employee of or partner in the firm, and
  - (c) any person who is an associate of a partner in the firm.

(5) In relation to a partnership constituted under the law of England and Wales or Northern Ireland, or the law of any other country or territory in which a partnership is not a legal person, “associate” means any person who is an associate of any of the partners.

### Minor definitions

55.—(1) In this Part—

“address” means—

- (a) in relation to an individual, his usual residential or business address, and
- (b) in relation to a firm, its registered or principal office in Northern Ireland;

“company” means any company or other body to which Article 392 of the 1986 Order (duty to appoint auditors) applies;

“director”, in relation to a body corporate, includes any person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the body are accustomed to act;

“firm” means a body corporate or a partnership;

“group”, in relation to a body corporate, means the body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

“holding company” and “subsidiary” have the meaning given by Article 4 of the 1986 Order;

“parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VIII of the 1986 Order.

(2) For the purposes of this Part a body shall be regarded as “established in the United Kingdom” if and only if—

- (a) it is incorporated or formed under the law of the United Kingdom or a part of the United Kingdom, or
- (b) its central management and control is exercised in the United Kingdom;

and any reference to a qualification “obtained in the United Kingdom” is to a qualification obtained from such a body.

### Index of defined expressions

56. The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same Article)—

address	Article 55(1)
appropriate qualification	Article 34
associate	Article 54
company	Article 55(1)
company auditor, company audit and company audit work	Article 27(2)
delegation order	Article 48
director (of a body corporate)	Article 55(1)
Director (in Schedule 14)	paragraph 1(1) of that Schedule

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established in the United Kingdom	Article 55(2)
firm	Article 55(1)
group (in relation to a body corporate)	Article 55(1)
guidance	
—of a qualifying body	Article 35(3)
—of a supervisory body	Article 33(4)
holding company	Article 55(1)
member (of a supervisory body)	Article 33(2)
obtained in the United Kingdom	Article 55(2)
parent undertaking	Article 55(1)
purposes of this Part	Article 27(1)
qualifying body	Article 35(1)
recognised	
—in relation to a professional qualification	Article 35(4) and Schedule 12
—in relation to a qualifying body	paragraph 2(1) of Schedule 12
—in relation to a supervisory body	Article 33(5) and Schedule 11
rules	
—of a qualifying body	Article 35(2)
—of a supervisory body	Article 33(3)
subsidiary and subsidiary undertaking	Article 55(1)
supervisory body	Article 33(1)

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### **Repeals consequential on Part III**

**57.** The statutory provisions set out in Part II of Schedule 15 are hereby repealed to the extent specified in the third column of that Part, being repeals consequential on this Part.