

SCHEDULES

SCHEDULE 9

Section 116.

DESIGNATED AGENCIES : STATUS AND EXERCISE OF TRANSFERRED FUNCTIONS

Status

- 1 (1) A designated agency shall not be regarded as acting on behalf of the Crown and its members, officers and servants shall not be regarded as Crown servants.
- (2) In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices) there shall be inserted at the appropriate place—
“Chairman of a designated agency within the meaning of the Financial Services Act 1986 if he is in receipt of remuneration”.
- (3) An amendment corresponding to that in sub-paragraph (2) above shall be made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

Exemption from requirement of "limited" in name of designated agency

- 2 (1) A company is exempt from the requirements of the Companies Act 1985 relating to the use of " limited " as part of the company name if—
 - (a) it is a designated agency ; and
 - (b) its memorandum or articles comply with the requirements specified in paragraph (b) of subsection (3) of section 30 of that Act.
- (2) In subsection (4) of that section (statutory declaration of compliance with requirements entitling company to exemption) the reference to the requirements of subsection (3) of that section shall include a reference to the requirements of sub-paragraph (1) above.
- (3) In section 31 of that Act (provisions applicable to exempted companies) the reference to a company which is exempt under section 30 of that Act shall include a reference to a company that is exempt under this paragraph and, in relation to such a company, the power conferred by subsection (2) of that section (direction to include " limited " in company name) shall be exercisable on the ground that the company has ceased to be a designated agency instead of the ground mentioned in paragraph (a) of that subsection.
- (4) In this paragraph references to the said Act of 1985 and sections 30 and 31 of that Act include references to the corresponding provisions in force in Northern Ireland.

The Tribunal

- 3 (1) Where a case is referred to the Tribunal by a designated agency the Tribunal shall send the Secretary of State a copy of any report made by it to the agency in respect of that case.

- (2) Where the powers which the Tribunal could, apart from any delegation order, require the Secretary of State to exercise are, by virtue of such an order or of an order resuming any function transferred by it, exercisable partly by the Secretary of State and partly by a designated agency or designated agencies the Tribunal may require any of them to exercise such of those powers as are exercisable by them respectively.

Legislative functions

- 4 (1) A designated agency shall send the Secretary of State a copy of any rules or regulations made by it by virtue of functions transferred to it by a delegation order and give him written notice of any amendment or revocation of or addition to any such rules or regulations.
- (2) A designated agency shall—
- (a) send the Secretary of State a copy of any guidance issued by the agency which is intended to have continuing effect and is issued in writing or other legible form ; and
 - (b) give him written notice of any amendment, revocation of or addition to guidance issued by it ;
- but notice need not be given of the revocation of guidance other than such as is mentioned in paragraph (a) above or of any amendment or addition which does not result in or consist of such guidance as is there mentioned.
- 5 Paragraphs 6 to 9 below shall have effect instead of section 205 (2) and (4) of this Act in relation to rules and regulations made by a designated agency in the exercise of functions transferred to it by a delegation order.
- 6 The rules and regulations shall be made by an instrument in writing.
- 7 The instrument shall specify the provision of this Act under which it is made.
- 8 (1) Immediately after an instrument is made it shall be printed and made available to the public with or without payment
- (2) A person shall not be taken to have contravened any rule or regulation if he shows that at the time of the alleged contravention the instrument containing the rule or regulation had not been made available as required by this paragraph.
- 9 (1) The production of a printed copy of an instrument purporting to be made by the agency on which is endorsed a certificate signed by an officer of the agency authorised by it for that purpose and stating—
- (a) that the instrument was made by the agency ;
 - (b) that the copy is a true copy of the instrument; and
 - (c) that on a specified date the instrument was made available to the public as required by paragraph 8 above,
- shall be prima facie evidence or, in Scotland, sufficient evidence of the facts stated in the certificate.
- (2) Any certificate purporting to be signed as mentioned in subparagraph (1) above shall be deemed to have been duly signed unless the contrary is shown.
- (3) Any person wishing in any legal proceedings to cite an instrument made by the agency may require the agency to cause a copy of it to be endorsed with such a certificate as is mentioned in this paragraph.

Fees

- 10 (1) A designated agency may retain any fees payable to it by virtue of the delegation order.
- (2) Any such fees shall be applicable for meeting the expenses of the agency in discharging its functions under the order and for any purposes incidental thereto.
- (3) Any fees payable to a designated agency by virtue of a delegation order made before the coming into force of section 3 of this Act may also be applied for repaying the principal of, and paying interest on, any money borrowed by the agency (or by any other person whose liabilities in respect of the money are assumed by the agency) which has been used for the purpose of defraying expenses incurred before the making of the order (whether before or after the passing of this Act) in making preparations for the agency becoming a designated agency.
- 11 If the function of prescribing the amount of any fee, or of making a scheme under section 112 above, is exercisable by a designated agency it may prescribe or make provision for such fees as will enable it to defray any such expenses as are mentioned in paragraph 10 above.

Consultation

- 12 (1) Before making any rules or regulations by virtue of functions transferred to it by a delegation order a designated agency shall, subject to sub-paragraphs (2) and (3) below, publish the proposed rules and regulations in such manner as appears to the agency to be best calculated to bring them to the attention of the public, together with a statement that representations in respect of the proposals can be made to the agency within a specified period; and before making the rules or regulations the agency shall have regard to any representations duly made in accordance with that statement
- (2) Sub-paragraph (1) above does not apply in any case in which the agency considers that the delay involved in complying with that sub-paragraph would be prejudicial to the interests of investors.
- (3) Sub-paragraph (1) above does not apply to the making of any rule or regulation if it is in the same terms (or substantially the same terms) as a proposed rule or regulation which was furnished by the agency to the Secretary of State for the purposes of section 114(9) of this Act.

Exchange of information

- 13 (1) The Secretary of State may communicate to a designated agency any information in his possession of which he could have availed himself for the purpose of exercising any function which by virtue of a delegation order is for the time being exercisable by the agency.
- (2) A designated agency may in the exercise of any function which by virtue of a delegation order is for the time being exercisable by it communicate to any other person any information which has been communicated to the agency by the Secretary of State and which the Secretary of State could have communicated to that person in the exercise of that function.
- (3) No communication of information under sub-paragraph (1) above shall constitute publication for the purposes of the law of defamation.