



# Companies Act 1989

## 1989 CHAPTER 40

### PART II

#### ELIGIBILITY FOR APPOINTMENT AS COMPANY AUDITOR

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

- C1** Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (20.10.1993) by 1993 c. xi, **ss. 1(2)**, 6(4)  
Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (21.7.1993) by S.I. 1993/1820, reg. 4, **Sch. para.3**  
Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (19.12.1993) by S.I. 1993/3245, **reg.3(5)**  
Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (28.5.1994) by S.I. 1994/1440, **art. 37(1)(2)** (with arts. 38, 39)  
Pt. 2 (ss. 24-54) applied (with modifications) (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), regs. {3(6)}, {4(5)}
- C2** Pt. 2 (ss. 24-54) applied (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 14(1)**
- C3** Pt. II (ss. 24-54) extended (9.2.2005) by The European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18), **reg. 11(6)** (with reg. 3)
- C4** Pt. 2 (ss. 24-54): functions of the Secretary of State transferred to the designated body (E.W.S) (5.9.2005) by The Companies Act 1989 (Delegation) Order 2005 (S.I. 2005/2337), **art. 3** (with arts. 7-10)

#### *Introduction*

#### **24 Introduction.**

- (1) The main purposes of this Part are to secure that only persons who are properly supervised and appropriately qualified are appointed company auditors, and that audits by persons so appointed are carried out properly and with integrity and with a proper degree of independence.

*Status: Point in time view as at 01/05/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Companies Act 1989, Part II. (See end of Document for details)*

- (2) A “company auditor” means a person appointed as auditor under Chapter V of Part XI of the <sup>M1</sup>Companies Act 1985; and the expressions “company audit” and “company audit work” shall be construed accordingly.

**Commencement Information**

- I1** S. 24 partly in force for certain purposes at 1.3.1990; wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

**Marginal Citations**

- M1** 1985 c. 6.

*Eligibility for appointment*

**25 Eligibility for appointment.**

- (1) A person is eligible for appointment as a company auditor only if he—
- (a) is a member of a recognised supervisory body, and
  - (b) is eligible for the appointment under the rules of that body.
- (2) An individual or a firm may be appointed a company auditor.
- (3) In the cases to which section 34 applies (individuals retaining only 1967 Act authorisation) a person’s eligibility for appointment as a company auditor is restricted as mentioned in that section.

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

- C5** S. 25 applied (S.) (17.7.1995) by 1994 c. 39, s. 88(2) (with s. 74(4)); S.I. 1995/1898, art. 2(a), Sch. S. 25 applied (6.1.1997) by S.I. 1996/2827, reg. 63, Sch. 6 para.1

**Commencement Information**

- I2** S. 25 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

**26 Effect of appointment of partnership.**

- (1) The following provisions apply to the appointment as company auditor of a partnership constituted under the law of England and Wales or Northern Ireland, or under the law of any other country or territory in which a partnership is not a legal person.
- (2) The appointment is (unless a contrary intention appears) an appointment of the partnership as such and not of the partners.
- (3) Where the partnership ceases, the appointment shall be treated as extending to—
- (a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment, and
  - (b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.

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- (4) For this purpose a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and a partnership or other person shall be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.
- (5) Where the partnership ceases and no person succeeds to the appointment under subsection (3), the appointment may with the consent of the company be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the company shall be treated as comprising the appointment.

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

**C6** S. 26 extended (1.10.1991) by S.I. 1991/1997, reg.3

**Commencement Information**

**I3** S. 26 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

**27 Ineligibility on ground of lack of independence.**

- (1) A person is ineligible for appointment as company auditor of a company if he is—
- (a) an officer or employee of the company, or
  - (b) a partner or employee of such a person, or a partnership of which such a person is a partner,

or if he is ineligible by virtue of paragraph (a) or (b) for appointment as company auditor of any associated undertaking of the company.

For this purpose an auditor of a company shall not be regarded as an officer or employee of the company.

- (2) A person is also ineligible for appointment as company auditor of a company if there exists between him or any associate of his and the company or any associated undertaking a connection of any such description as may be specified by regulations made by the Secretary of State.

The regulations may make different provisions for different cases.

- (3) In this section “associated undertaking”, in relation to a company, means—
- (a) a parent undertaking or subsidiary undertaking of the company, or
  - (b) a subsidiary undertaking of any parent undertaking of the company.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

**C7** S. 27 amended (6.1.1997) by S.I. 1996/2827, reg. 63, Sch. 6 para. 2(3)

**C8** S. 27 applied (temp. from 15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), regs. 4(6), 9, Sch. 1 para. 4(3)

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part II. (See end of Document for details)*

#### Commencement Information

**I4** S. 27 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

### 28 Effect of ineligibility.

- (1) No person shall act as a company auditor if he is ineligible for appointment to the office.
- (2) If during his term of office a company auditor becomes ineligible for appointment to the office, he shall thereupon vacate office and shall forthwith give notice in writing to the company concerned that he has vacated it by reason of ineligibility.
- (3) A person who acts as company auditor in contravention of subsection (1), or fails to give notice of vacating his office as required by subsection (2), is guilty of an offence and liable—
  - (a) on conviction on indictment, to a fine, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (4) In the case of continued contravention he is liable on a second or subsequent summary conviction (instead of the fine mentioned in subsection (3)(b)) to a fine not exceeding one-tenth of the statutory maximum in respect of each day on which the contravention is continued.
- (5) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment.

#### Commencement Information

**I5** S. 28 wholly in force at 1.10.1991 subject to transitional provisions see s. 215 and S.I. 1991/1996, arts. 2(1)(a),3

### 29 Power of Secretary of State to require second audit.

- (1) Where a person appointed company auditor was, for any part of the period during which the audit was conducted, ineligible for appointment to that office, the Secretary of State may direct the company concerned to retain a person eligible for appointment as auditor of the company—
  - (a) to audit the relevant accounts again, or
  - (b) to review the first audit and to report (giving his reasons) whether a second audit is needed;
 and the company shall comply with such a direction within 21 days of its being given.
- (2) If a second audit is recommended the company shall forthwith take such steps as are necessary to comply with the recommendation.
- (3) Where a direction is given under this section, the Secretary of State shall send a copy of the direction to the registrar of companies; and the company shall within 21 days of receiving any report under subsection (1)(b) send a copy of it to the registrar of companies.

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The provisions of the <sup>M2</sup>Companies Act 1985 relating to the delivery of documents to the registrar apply for the purposes of this subsection.

- (4) Any statutory or other provisions applying in relation to the first audit shall apply, so far as practicable, in relation to a second audit under this section.
- (5) If a company fails to comply with the requirements of this section, it is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum; and in the case of continued contravention it is liable on a second or subsequent summary conviction (instead of the fine mentioned above) to a fine not exceeding one-tenth of the statutory maximum in respect of each day on which the contravention is continued.
- (6) A direction under this section is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the <sup>M3</sup>Court of Session Act 1988.
- (7) If a person accepts an appointment, or continues to act, as company auditor at a time when he knows he is ineligible, the company concerned may recover from him any costs incurred by it in complying with the requirements of this section.

#### Commencement Information

**I6** S. 29 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

#### Marginal Citations

**M2** 1985 c. 6.

**M3** 1988 c. 36.

### *Recognition of supervisory bodies and professional qualifications*

## **30 Supervisory bodies.**

- (1) In this Part a “supervisory body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which maintains and enforces rules as to—
  - (a) the eligibility of persons to seek appointment as company auditors, and
  - (b) the conduct of company audit work,which are binding on persons seeking appointment or acting as company auditors either because they are members of that body or because they are otherwise subject to its control.
- (2) In this Part references to the members of a supervisory body are to the persons who, whether or not members of the body, are subject to its rules in seeking appointment or acting as company auditors.
- (3) In this Part references to the rules of a supervisory body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part.

This includes rules relating to the admission and expulsion of members of the body, so far as relevant for the purposes of this Part.

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*Changes to legislation: There are currently no known outstanding effects  
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- (4) In this Part references to guidance issued by a supervisory body are to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members which would, if it were a rule, fall within subsection (3).
- (5) The provisions of Parts I and II of Schedule 11 have effect with respect to the recognition of supervisory bodies for the purposes of this Part.

### **31 Meaning of “appropriate qualification”.**

- (1) A person holds an appropriate qualification for the purposes of this Part if—
  - (a) he was, by virtue of membership of a body recognised for the purposes of section 389(1)(a) of the <sup>M4</sup>Companies Act 1985, qualified for appointment as auditor of a company under that section immediately before 1st January 1990 and immediately before the commencement of section 25 above,
  - (b) he holds a recognised professional qualification obtained in the United Kingdom, or
  - (c) he holds an approved overseas qualification and satisfies any additional educational requirements applicable in accordance with section 33(4).
- (2) A person who, immediately before 1st January 1990 and immediately before the commencement of section 25 above, was qualified for appointment as auditor of a company under section 389 of the <sup>M5</sup>Companies Act 1985 otherwise than by virtue of membership of a body recognised for the purposes of section 389(1)(a)—
  - (a) shall be treated as holding an appropriate qualification for twelve months from the day on which section 25 comes into force, and
  - (b) shall continue to be so treated if within that period he notifies the Secretary of State that he wishes to retain the benefit of his qualification.

The notice shall be in writing and shall contain such information as the Secretary of State may require.
- (3) If a person fails to give such notice within the time allowed he may apply to the Secretary of State, giving such information as would have been required in connection with a notice, and the Secretary of State may, if he is satisfied—
  - (a) that there was good reason why the applicant did not give notice in time, and
  - (b) that the applicant genuinely intends to practise as an auditor in Great Britain,

direct that he shall be treated as holding an appropriate qualification for the purposes of this Part.
- (4) A person who—
  - (a) began before 1st January 1990 a course of study or practical training leading to a professional qualification in accountancy offered by a body established in the United Kingdom, and
  - (b) obtained that qualification on or after that date and before 1st January 1996,

shall be treated as holding an appropriate qualification if the qualification is approved by the Secretary of State for the purposes of this subsection.
- (5) Approval shall not be given unless the Secretary of State is satisfied that the body concerned has or, as the case may be, had at the relevant time adequate arrangements to ensure that the qualification is, or was, awarded only to persons educated and trained to a standard equivalent to that required in the case of a recognised professional qualification.

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- (6) A person shall not be regarded as holding an appropriate qualification for the purposes of this Part except in the above cases.

#### Commencement Information

**I7** S. 31 wholly in force; s. 31 in force for certain purposes at 1.3.1990 see S.I. 1990/142 and wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

#### Marginal Citations

**M4** 1985 c. 6.

**M5** 1985 c. 6.

### 32 Qualifying bodies and recognised professional qualifications.

- (1) In this Part a “qualifying body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which offers a professional qualification in accountancy.
- (2) In this Part references to the rules of a qualifying body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part.

This includes rules relating to—

- (a) admission to or expulsion from a course of study leading to a qualification,
- (b) the award or deprivation of a qualification, or
- (c) the approval of a person for the purposes of giving practical training or the withdrawal of such approval,

so far as relevant for the purposes of this Part.

- (3) In this Part references to guidance issued by any such body are to any guidance which the body issues, or any recommendation it makes to all or any class of persons holding or seeking to hold a qualification, or approved or seeking to be approved by the body for the purpose of giving practical training, which would, if it were a rule, fall within subsection (2).
- (4) The provisions of Parts I and II of Schedule 12 have effect with respect to the recognition for the purposes of this Part of a professional qualification offered by a qualifying body.

### 33 Approval of overseas qualifications.

- (1) The Secretary of State may declare that persons who—
- (a) are qualified to audit accounts under the law of a specified country or territory outside the United Kingdom, or
  - (b) hold a specified professional qualification in accountancy recognised under the law of a country or territory outside the United Kingdom,
- shall be regarded for the purposes of this Part as holding an approved overseas qualification.

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- (2) A qualification shall not be so approved by the Secretary of State unless he is satisfied that it affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.
- (3) In exercising the power conferred by subsection (1) the Secretary of State may have regard to the extent to which persons—
  - (a) eligible under this Part for appointment as a company auditor, or
  - (b) holding a professional qualification recognised under this Part,
 are recognised by the law of the country or territory in question as qualified to audit accounts there.
- (4) The Secretary of State may direct that a person holding an approved overseas qualification shall not be treated as holding an appropriate qualification for the purposes of this Part unless he holds such additional educational qualifications as the Secretary of State may specify for the purpose of ensuring that such persons have an adequate knowledge of the law and practice in the United Kingdom relevant to the audit of accounts.
- (5) Different directions may be given in relation to different qualifications.
- (6) The Secretary of State may if he thinks fit, having regard to the considerations mentioned in subsections (2) and (3), withdraw his approval of an overseas qualification in relation to persons becoming qualified as mentioned in subsection (1) (a), or obtaining such a qualification as is mentioned in subsection (1)(b), after such date as he may specify.

#### **34 Eligibility of individuals retaining only 1967 Act authorisation.**

- (1) A person whose only appropriate qualification is that he retains an authorisation granted by the Board of Trade or the Secretary of State under section 13(1) of the <sup>M6</sup>Companies Act 1967 is eligible only for appointment as auditor of an unquoted company.
- (2) A company is “unquoted” if, at the time of the person’s appointment, no shares or debentures of the company, or of a parent undertaking of which it is a subsidiary undertaking, have been quoted on a stock exchange (in Great Britain or elsewhere) or offered (whether in Great Britain or elsewhere) to the public for subscription or purchase.
- (3) This section does not authorise the appointment of such a person as auditor of a company that carries on business as the promoter of a trading stamp scheme within the meaning of the <sup>M7</sup>Trading Stamps Act 1964.
- (4) References to a person eligible for appointment as company auditor under section 25 in enactments relating to eligibility for appointment as auditor of a body other than a company do not include a person to whom this section applies.

#### **Commencement Information**

**I8** S. 34 wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

#### **Marginal Citations**

**M6** 1967 c. 81.



*Status:* Point in time view as at 01/05/2004. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Companies Act 1989, Part II. (See end of Document for details)

M7 1964 c. 71.

### *Duties of recognised bodies*

## **35 The register of auditors.**

- (1) The Secretary of State shall make regulations requiring the keeping of a register of—
  - (a) the individuals and firms eligible for appointment as company auditor, and
  - (b) the individuals holding an appropriate qualification who are responsible for company audit work on behalf of such firms.
- (2) The regulations shall provide that each person's entry in the register shall give—
  - (a) his name and address, and
  - (b) in the case of a person eligible as mentioned in subsection (1)(a), the name of the relevant supervisory body,together with such other information as may be specified by the regulations.
- (3) The regulations may impose such obligations as the Secretary of State thinks fit—
  - (a) on recognised supervisory bodies,
  - (b) on persons eligible for appointment as company auditor, and
  - (c) on any person with whom arrangements are made by one or more recognised supervisory bodies with respect to the keeping of the register.
- (4) The regulations may include provision—
  - (a) requiring the register to be open to inspection at such times and places as may be specified in the regulations or determined in accordance with them,
  - (b) enabling a person to require a certified copy of an entry in the register, and
  - (c) authorising the charging of fees for inspection, or the provision of copies, of such reasonable amount as may be specified in the regulations or determined in accordance with them;and may contain such other supplementary and incidental provisions as the Secretary of State thinks fit.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The obligations imposed by regulations under this section on such persons as are mentioned in subsection (3)(a) or (c) are enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the <sup>M8</sup>Court of Session Act 1988.

#### **Commencement Information**

**I9** S. 35 wholly in force at 26. 6. 1991 see s. 215 and S.I. 1991/1452, art. 2

#### **Marginal Citations**

**M8** 1988 c. 36.

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### 36 Information about firms to be available to public.

- (1) The Secretary of State shall make regulations requiring recognised supervisory bodies to keep and make available to the public the following information with respect to the firms eligible under their rules for appointment as a company auditor—
  - (a) in relation to a body corporate, the name and address of each person who is a director of the body or holds any shares in it,
  - (b) in relation to a partnership, the name and address of each partner,
 and such other information as may be specified in the regulations.
- (2) The regulations may impose such obligations as the Secretary of State thinks fit—
  - (a) on recognised supervisory bodies,
  - (b) on persons eligible for appointment as company auditor, and
  - (c) on any person with whom arrangements are made by one or more recognised supervisory bodies with respect to the keeping of the information.
- (3) The regulations may include provision—
  - (a) requiring that the information be open to inspection at such times and places as may be specified in the regulations or determined in accordance with them,
  - (b) enabling a person to require a certified copy of the information or any part of it, and
  - (c) authorising the charging of fees for inspection, or the provision of copies, of such reasonable amount as may be specified in the regulations or determined in accordance with them;
 and may contain such other supplementary and incidental provisions as the Secretary of State thinks fit.
- (4) The regulations may make different provision in relation to different descriptions of information and may contain such other supplementary and incidental provisions as the Secretary of State thinks fit.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The obligations imposed by regulations under this section on such persons as are mentioned in subsection (2)(a) or (c) are enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the <sup>M9</sup>Court of Session Act 1988.

#### Commencement Information

**I10** S. 36 wholly in force at 26. 6. 1991 see s. 215 and S.I. 1991/1452, art. 2

#### Marginal Citations

**M9** 1988 c. 36.

### 37 Matters to be notified to the Secretary of State.

- (1) The Secretary of State may require a recognised supervisory or qualifying body—
  - (a) to notify him forthwith of the occurrence of such events as he may specify in writing and to give him such information in respect of those events as is so specified;

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- (b) to give him, at such times or in respect of such periods as he may specify in writing, such information as is so specified.
- (2) The notices and information required to be given shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Part.
- (3) The Secretary of State may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section shall be given in writing unless the Secretary of State specifies or approves some other manner.

### **38 Power to call for information.**

- (1) The Secretary of State may by notice in writing require a recognised supervisory or qualifying body to give him such information as he may reasonably require for the exercise of his functions under this Part.
- (2) The Secretary of State may require that any information which he requires under this section shall be given within such reasonable time and verified in such manner as he may specify.

### **39 Compliance orders.**

- (1) If at any time it appears to the Secretary of State—
  - (a) in the case of a recognised supervisory body, that any requirement of Schedule 11 is not satisfied,
  - (b) in the case of a recognised professional qualification, that any requirement of Schedule 12 is not satisfied, or
  - (c) that a recognised supervisory or qualifying body has failed to comply with an obligation to which it is subject by virtue of this Part,he may, instead of revoking the relevant recognition order, make an application to the court under this section.
- (2) If on such application the court decides that the subsection or requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question it may order the supervisory or qualifying body in question to take such steps as the court directs for securing that the subsection or requirement is satisfied or that the obligation is complied with.
- (3) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

### **40 Directions to comply with international obligations.**

- (1) If it appears to the Secretary of State—
  - (a) that any action proposed to be taken by a recognised supervisory or qualifying body, or a body established by order under section 46, would be incompatible with Community obligations or any other international obligations of the United Kingdom, or
  - (b) that any action which that body has power to take is required for the purpose of implementing any such obligations,he may direct the body not to take or, as the case may be, to take the action in question.

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*Changes to legislation: There are currently no known outstanding effects  
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- (2) A direction may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient.
- (3) A direction under this section is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the <sup>M10</sup>Court of Session Act 1988.

**Marginal Citations**

**M10** 1988 c. 36.

*Offences*

**41 False and misleading statements.**

- (1) A person commits an offence if—
  - (a) for the purposes of or in connection with any application under this Part, or
  - (b) in purported compliance with any requirement imposed on him by or under this Part,

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.
- (2) It is an offence for a person whose name does not appear on the register of auditors kept under regulations under section 35 to describe himself as a registered auditor or so to hold himself out as to indicate, or be reasonably understood to indicate, that he is a registered auditor.
- (3) It is an offence for a body which is not a recognised supervisory or qualifying body to describe itself as so recognised or so to describe itself or hold itself out as to indicate, or be reasonably understood to indicate, that it is so recognised.
- (4) A person guilty of an offence under subsection (1) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.
- (5) A person guilty of an offence under subsection (2) or (3) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both.

Where a contravention of subsection (2) or (3) involves a public display of the offending description, the maximum fine that may be imposed is (in place of that mentioned above) an amount equal to level 5 on the standard scale multiplied by the number of days for which the display has continued.

- (6) It is a defence for a person charged with an offence under subsection (2) or (3) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

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### Commencement Information

- III S. 41 wholly in force; s. 41 in force for certain purposes at 1.3.1990 see S.I. 1990/142 and wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

## 42 Offences by bodies corporate, partnerships and unincorporated associations.

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.
- (3) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where an offence under this Part committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

## 43 Time limits for prosecution of offences.

- (1) An information relating to an offence under this Part which is triable by a magistrates' court in England and Wales may be so tried on an information laid at any time within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State to justify the proceedings comes to his knowledge.
- (2) Proceedings in Scotland for an offence under this Part may be commenced at any time within twelve months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within twelve months after the date on which it came to the knowledge of the latter.

For the purposes of this subsection proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if the warrant is executed without undue delay.

- (3) Subsection (1) does not authorise the trial of an information laid, and subsection (2) does not authorise the commencement of proceedings, more than three years after the commission of the offence.
- (4) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate or the Secretary of State as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.

*Status: Point in time view as at 01/05/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part II. (See end of Document for details)*

- (5) Nothing in this section affects proceedings within the time limits prescribed by section 127(1) of the <sup>M11</sup>Magistrates' Courts Act 1980 or section 331 of the <sup>M12</sup>Criminal Procedure (Scotland) Act 1975 (the usual time limits for criminal proceedings).

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

- C9** S. 43(1) modified (5.9.2005) by [The Companies Act 1989 \(Delegation\) Order 2005 \(S.I. 2005/2337\)](#), [art. 10](#)
- C10** S. 43(2) modified (5.9.2005) by [The Companies Act 1989 \(Delegation\) Order 2005 \(S.I. 2005/2337\)](#), [art. 10](#)
- C11** S. 43(4) modified (5.9.2005) by [The Companies Act 1989 \(Delegation\) Order 2005 \(S.I. 2005/2337\)](#), [art. 10](#)

**Marginal Citations**

- M11** 1980 c. 43.
- M12** 1975 c. 21.

**44 Jurisdiction and procedure in respect of offences.**

- (1) Summary proceedings for an offence under this Part may, without prejudice to any jurisdiction exercisable apart from this section, be taken against a body corporate or unincorporated association at any place at which it has a place of business and against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under this Part by an unincorporated association shall be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate.
- (3) Section 33 of the <sup>M13</sup>Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in England and Wales with an offence under this Part as they apply in the case of a corporation.
- (4) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under this Part by an unincorporated association, [<sup>F1</sup>section 70 of the Criminal Procedure (Scotland) Act 1995] (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.
- (5) A fine imposed on an unincorporated association on its conviction of such an offence shall be paid out of the funds of the association.

**Textual Amendments**

- F1** Words in s. 44(4) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\)](#), [Sch. 4 para. 74\(2\)](#)

**Marginal Citations**

- M13** 1925 c. 86.

*Status: Point in time view as at 01/05/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part II. (See end of Document for details)*

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### *Supplementary provisions*

#### **45 Fees.**

- (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 subsection is complied with.
- (2) Every recognised supervisory or qualifying body shall pay such periodical fees to the Secretary of State as may be prescribed.
- (3) In this section “prescribed” means prescribed by regulations made by the Secretary of State, which may make different provision for different cases or classes of case.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Fees received by the Secretary of State by virtue of this Part shall be paid into the Consolidated Fund.

#### **46 Delegation of functions of Secretary of State.**

- (1) The Secretary of State may by order (a “delegation order”) establish a body corporate to exercise his 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 Secretary of State under this Part except—
  - [<sup>F2</sup>(a) such functions under Part I of Schedule 14 (prevention of restrictive practices) as are excepted by regulations under section 47, and]
  - (b) his 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 Secretary of State 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 Secretary of State—
  - (a) section 38 (power to call for information), and
  - (b) section 40 (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 section 33(3) (lack of reciprocity) shall be subject to the reservation that the function is exercisable only with the consent of the Secretary of State.
- (4) A delegation order may be amended or, if it appears to the Secretary of State that it is no longer in the public interest that the order should remain in force, revoked by a further order under this section.
- (5) Where functions are transferred or resumed, the Secretary of State 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 him 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.

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- (7) An order under this section shall be made by statutory instrument.
- (8) 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 resolution of each House of Parliament; and any other description of order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F2** S. 46(2)(a) ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, [Sch. 2 para. 2\(2\)](#) (with reg. 6(2))

VALID FROM 01/01/2005

#### [<sup>F3</sup>46A Circumstances in which Secretary of State may delegate functions to existing body

- (1) The Secretary of State's power to make a delegation order under section 46 which designates an existing body (see section 46(1A)(b)) is exercisable in accordance with this section.
- (2) The Secretary of State may make such an order if it appears to the Secretary of State—
  - (a) that the body is willing and able to exercise the functions that would be transferred by the order; and
  - (b) that the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (3) are met.
- (3) The conditions are—
  - (a) that the functions in question will be exercised effectively; and
  - (b) where the delegation order is to contain any requirements or other provisions specified under subsection (4), that those functions will be exercised in accordance with any such requirements or provisions.
- (4) The delegation order may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Secretary of State to be appropriate.
- (5) An existing body—
  - (a) may be designated by a delegation order under section 46, and
  - (b) may accordingly exercise functions of the Secretary of State in pursuance of the order,
 despite any involvement of the body in the exercise of any functions under arrangements within any of paragraphs 17, 18, 19(1) or 20(1) of Schedule 11.]



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#### Textual Amendments

- F3** S. 46A inserted (1.1.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004](#) (c. 27), [ss. 4, 65](#); S.I. 2004/3322, [art. 2\(1\)](#), Sch. 1

#### [<sup>F4</sup>47] Restrictive practices.

- (1) The provisions of Schedule 14 have effect with respect to certain matters relating to restrictive practices and competition law.
- (2) The Secretary of State 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 subsection (2), and
  - (c) impose such duties on the body established by the delegation order, the Secretary of State and [<sup>F5</sup>the Office of Fair Trading] as appear to the Secretary of State to be appropriate.
- (4) The regulations shall contain such provision as appears to the Secretary of State to be necessary or expedient for reserving to him 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 Secretary of State, and
  - (b) empower the Secretary of State to direct the body to exercise its powers in such manner as may be specified in the direction.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F4** S. 47 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), [reg. 5](#), [Sch. 2 para. 2\(2\)](#) (with [reg. 6\(2\)](#))
- F5** Words in s. 47(3)(c) substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25 para. 21\(2\)](#); S.I. 2003/766, [art. 2](#), Sch. (with transitional and transitory provision in [art. 3](#))

#### 48 Exemption from liability for damages.

- (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 subsection applies, unless the act or omission is shown to have been in bad faith.
- (2) Subsection (1) applies to the functions of the body so far as relating to, or to matters arising out of—

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- (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 section 46, unless the act or omission is shown to have been in bad faith.

#### 49 Service of notices.

- (1) This section 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 Secretary of State.
- (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 section and section 7 of the <sup>M14</sup>Interpretation Act 1978 (service of documents by post) in its application to this section, 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.

#### Commencement Information

**I12** S. 49 wholly in force; s. 49 in force for certain purposes at 1.3.1990 see S.I. 1990/142 and wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, **art. 2(1)(a)**

#### Marginal Citations

**M14** 1978 c. 30.

*Status: Point in time view as at 01/05/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part II. (See end of Document for details)*

## **50 Power to make consequential amendments.**

- (1) The Secretary of State may by regulations make such amendments of enactments as appear to him to be necessary or expedient in consequence of the provisions of this Part having effect in place of section 389 of the <sup>M15</sup>Companies Act 1985.
- (2) That power extends to making such amendments as appear to the Secretary of State necessary or expedient of—
  - (a) enactments referring by name to the bodies of accountants recognised for the purposes of section 389(1)(a) of the Companies Act 1985, and
  - (b) enactments making with respect to other statutory auditors provision as to the matters dealt with in relation to company auditors by section 389 of the Companies Act 1985.
- (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 Secretary of State to be necessary or expedient.
- (5) The Secretary of State shall not make regulations under this section with respect to any statutory auditors without the consent of—
  - (a) the Minister 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 Minister, the person by whom they are appointed.
- (6) In this section a “statutory auditor” means a person appointed auditor in pursuance of any enactment authorising or requiring the appointment of an auditor or auditors.
- (7) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **Marginal Citations**

**M15** 1985 c. 6.

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

- (1) The Secretary of State may by regulations make such amendments of enactments as appear to him 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 enactment.
- (2) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part II. (See end of Document for details)*

## 52 Meaning of “associate”.

- (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.

### Commencement Information

**I13** S. 52 wholly in force; s. 52 in force for certain purposes at 1.3.1990 see S.I. 1990/142 and wholly in force at 1.10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

## 53 Minor definitions.

- (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 Great Britain;
  - “company” means any company or other body to which section 384 of the <sup>M16</sup>Companies Act 1985 (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;
  - “enactment” includes an enactment contained in subordinate legislation within the meaning of the <sup>M17</sup>Interpretation Act 1978;
  - “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; and

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“holding company” and “subsidiary” have the meaning given by section 736 of the <sup>M18</sup>Companies Act 1985;

“parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 1985.

- (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.

#### Commencement Information

**I14** S. 53 wholly in force; s. 53 in force for certain purposes at 1.3.1990 see S.I. 1990/142 and wholly in force at 1. 10.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(a)

#### Marginal Citations

**M16** 1985 c. 6.

**M17** 1978 c. 30.

**M18** 1985 c. 6.

## 54 Index of defined expressions.

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 section)—

address	section 53(1)
appropriate qualification	section 31
associate	section 52
company	section 53(1)
company auditor, company audit and company audit work	section 24(2)
delegation order	section 46
director (of a body corporate)	section 53(1)
[ <sup>F6</sup> Director (in Schedule 14)]	paragraph 1(1) of that Schedule]
enactment	section 53(1)
established in the United Kingdom	section 53(2)
firm	section 53(1)
group (in relation to a body corporate)	section 53(1)
guidance	
—of a qualifying body	section 32(3)

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–of a supervisory body	section 30(4)
holding company	section 53(1)
member (of a supervisory body)	section 30(2)
obtained in the United Kingdom	section 53(2)
parent undertaking	section 53(1)
purposes of this Part	section 24(1)
qualifying body	section 32(1)
recognised	
–in relation to a professional qualification	section 32(4) and Schedule 12
–in relation to a qualifying body	paragraph 2(1) of Schedule 12
–in relation to a supervisory body	section 30(5) and Schedule 11
rules	
–of a qualifying body	section 32(2)
–of a supervisory body	section 30(3)
subsidiary and subsidiary undertaking	section 53(1)
supervisory body	section 30(1)

#### Textual Amendments

**F6** [S. 54](#): entry in Table ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, **Sch. 2 para. 2(3)** (with reg. 6(2))

#### Commencement Information

**I15** [S. 54](#) wholly in force; [s. 54](#) in force for certain purposes at 1.3.1990 see [S.I. 1990/142](#) and wholly in force at 1.10.1991 see [s. 215](#) and [S.I. 1991/1996](#), **art. 2(1)(a)**

**Status:**

Point in time view as at 01/05/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1989, Part II.