



# Companies Act 1989

## 1989 CHAPTER 40

### PART II

#### ELIGIBILITY FOR APPOINTMENT AS COMPANY AUDITOR

##### *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>F1</sup>(a) such functions under Part I of Schedule 14 (prevention of restrictive practices) as are excepted by regulations under section 47, and]

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- (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.
- (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

- F1** 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>F2</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

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- (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.]

#### Textual Amendments

- F2** 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>F3</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>F4</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

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- (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

- F3** 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))
- F4** 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—
- (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.

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- (4) For the purposes of this section and section 7 of the <sup>M1</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

- II** 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

- M1** 1978 c. 30.

## 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>M2</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.

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- (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**

**M2** 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.

**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.

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#### Commencement Information

- I2** 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>M3</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>M4</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

“holding company” and “subsidiary” have the meaning given by section 736 of the <sup>M5</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

- I3** 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

- M3** 1985 c. 6.  
**M4** 1978 c. 30.  
**M5** 1985 c. 6.

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## 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>F5</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)
–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)

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**Textual Amendments**

- F5** 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))

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**Commencement Information**

- I4** 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)**

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