



# Companies (Audit, Investigations and Community Enterprise) Act 2004

## 2004 CHAPTER 27

### PART 2

#### COMMUNITY INTEREST COMPANIES

##### *Introductory*

#### **26 Community interest companies**

- (1) There is to be a new type of company to be known as the community interest company.
- (2) In accordance with this Part—
  - (a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and
  - (b) a company limited by guarantee and having a share capital may become a community interest company.
- (3) A community interest company established for charitable purposes is to be treated as not being so established and accordingly—
  - (a) is not a charity, and
  - (b) must not be given such intimation as is mentioned in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (Scottish charities).

#### **27 Regulator**

- (1) There is to be an officer known as the Regulator of Community Interest Companies (referred to in this Part as “the Regulator”).
- (2) The Secretary of State must appoint a person to be the Regulator.

- (3) The Regulator has such functions relating to community interest companies as are conferred or imposed by or by virtue of this Act or any other enactment.
- (4) The Regulator must adopt an approach to the discharge of those functions which is based on good regulatory practice, that is an approach adopted having regard to—
  - (a) the likely impact on those who may be affected by the discharge of those functions,
  - (b) the outcome of consultations with, and with organisations representing, community interest companies and others with relevant experience, and
  - (c) the desirability of using the Regulator’s resources in the most efficient and economic way.
- (5) The Regulator may issue guidance, or otherwise provide assistance, about any matter relating to community interest companies.
- (6) The Secretary of State may require the Regulator to issue guidance or otherwise provide assistance about any matter relating to community interest companies which is specified by the Secretary of State.
- (7) Any guidance issued under this section must be such that it is readily accessible to, and capable of being easily understood by, those at whom it is aimed; and any other assistance provided under this section must be provided in the manner which the Regulator considers is most likely to be helpful to those to whom it is provided.
- (8) Schedule 3 (further provisions about the Regulator) has effect.

## **28 Appeal Officer**

- (1) There is to be an officer known as the Appeal Officer for Community Interest Companies (referred to in this Part as “the Appeal Officer”).
- (2) The Secretary of State must appoint a person to be the Appeal Officer.
- (3) The Appeal Officer has the function of determining appeals against decisions and orders of the Regulator which under or by virtue of this Act or any other enactment lie to the Appeal Officer.
- (4) An appeal to the Appeal Officer against a decision or order of the Regulator may be brought on the ground that the Regulator made a material error of law or fact.
- (5) On such an appeal the Appeal Officer must—
  - (a) dismiss the appeal,
  - (b) allow the appeal, or
  - (c) remit the case to the Regulator.
- (6) Where a case is remitted the Regulator must reconsider it in accordance with any rulings of law and findings of fact made by the Appeal Officer.
- (7) Schedule 4 (further provisions about the Appeal Officer) has effect.

## **29 Official Property Holder**

- (1) There is to be an officer known as the Official Property Holder for Community Interest Companies (referred to in this Part as “the Official Property Holder”).

- (2) The Regulator must appoint a member of the Regulator's staff to be the Official Property Holder.
- (3) The Official Property Holder has such functions relating to property of community interest companies as are conferred or imposed by or by virtue of this Act or any other enactment.
- (4) Schedule 5 (further provisions about the Official Property Holder) has effect.

### *Requirements*

## **30 Cap on distributions and interest**

- (1) Community interest companies must not distribute assets to their members unless regulations make provision authorising them to do so.
- (2) If regulations authorise community interest companies to distribute assets to their members, the regulations may impose limits on the extent to which they may do so.
- (3) Regulations may impose limits on the payment of interest on debentures issued by, or debts of, community interest companies.
- (4) Regulations under this section may make provision for limits to be set by the Regulator.
- (5) The Regulator—
  - (a) may set a limit by reference to a rate determined by any other person (as it has effect from time to time), and
  - (b) may set different limits for different descriptions of community interest companies.
- (6) The Regulator must (in accordance with section 27)—
  - (a) undertake appropriate consultation before setting a limit, and
  - (b) in setting a limit, have regard to its likely impact on community interest companies.
- (7) Regulations under this section may include power for the Secretary of State to require the Regulator to review a limit or limits.
- (8) Where the Regulator sets a limit he must publish notice of it in the Gazette.

## **31 Distribution of assets on winding up**

- (1) Regulations may make provision for and in connection with the distribution, on the winding up of a community interest company, of any assets of the company which remain after satisfaction of the company's liabilities.
- (2) The regulations may, in particular, amend or modify the operation of any enactment or instrument.

## **32 Memorandum and articles**

- (1) The memorandum of a community interest company must state that the company is to be a community interest company.

- (2) Section 7(1) of the Companies Act 1985 (c. 6) (articles) applies in relation to a community interest company limited by shares as if it were a company limited by guarantee (so that articles must be registered).
- (3) The memorandum and articles of a community interest company of any description—
- (a) must at all times include such provisions as regulations require to be included in the memorandum and articles of every community interest company or a community interest company of that description, and
  - (b) must not include such provisions as regulations require not to be so included.
- (4) The provisions required by regulations under subsection (3)(a) to be included in the memorandum or articles of a community interest company may (in particular) include—
- (a) provisions about the transfer and distribution of the company's assets (including their distribution on a winding up),
  - (b) provisions about the payment of interest on debentures issued by the company or debts of the company,
  - (c) provisions about membership of the company,
  - (d) provisions about the voting rights of members of the company,
  - (e) provisions about the appointment and removal of directors of the company, and
  - (f) provisions about voting at meetings of directors of the company.
- (5) The memorandum and articles of a community interest company are of no effect to the extent that they—
- (a) are inconsistent with provisions required to be included in the memorandum or articles of the company by regulations under subsection (3)(a), or
  - (b) include provisions required not to be included by regulations under subsection (3)(b).
- (6) Regulations may make provision for and in connection with restricting the ability of a community interest company under section 4 of the Companies Act 1985 (c. 6) to alter its memorandum with respect to the statement of its objects.

### 33 Names

- (1) The name of a community interest company which is not a public company must end with—
- (a) “community interest company”, or
  - (b) “c.i.c.”.
- (2) But the name of such a company may (instead) end with—
- (a) “cwmni buddiant cymunedol”, or
  - (b) “c.b.c.”,
- if the memorandum of the company states that the company's registered office is to be situated in Wales.
- (3) The name of a community interest company which is a public company must end with—
- (a) “community interest public limited company”, or
  - (b) “community interest p.l.c.”.

- (4) But the name of such a company may (instead) end with—
  - (a) “cwmni buddiant cymunedol cyhoeddus cyfyngedig”, or
  - (b) “cwmni buddiant cymunedol c.c.c.”,if the memorandum of the company states that the company’s registered office is to be situated in Wales.
- (5) Section 25 of the Companies Act 1985 (company name to end with “public limited company” or “limited” or equivalent) does not apply to community interest companies.
- (6) Schedule 6 (further provisions about names) has effect.

### **34 Community interest company reports**

- (1) The directors of a community interest company must prepare in respect of each financial year a report about the company’s activities during the financial year (a “community interest company report”).
- (2) Section 242(1) of the Companies Act 1985 is to be treated as requiring the directors of a community interest company to deliver to the registrar of companies a copy of the community interest company report.
- (3) Regulations—
  - (a) must make provision requiring community interest company reports to include information about the remuneration of directors,
  - (b) may make provision as to the form of, and other information to be included in, community interest company reports, and
  - (c) may apply provisions of the Companies Act 1985 (c. 6) relating to directors’ reports to community interest company reports (with any appropriate modifications).
- (4) The registrar of companies must forward to the Regulator a copy of each community interest company report delivered to the registrar by virtue of this section.

### **35 Community interest test and excluded companies**

- (1) This section has effect for the purposes of this Part.
- (2) A company satisfies the community interest test if a reasonable person might consider that its activities are being carried on for the benefit of the community.
- (3) An object stated in the memorandum of a company is a community interest object of the company if a reasonable person might consider that the carrying on of activities by the company in furtherance of the object is for the benefit of the community.
- (4) Regulations may provide that activities of a description prescribed by the regulations are to be treated as being, or as not being, activities which a reasonable person might consider are activities carried on for the benefit of the community.
- (5) “Community” includes a section of the community (whether in Great Britain or anywhere else); and regulations may make provision about what does, does not or may constitute a section of the community.
- (6) A company is an excluded company if it is a company of a description prescribed by regulations.

### *Becoming a community interest company*

#### **36 New companies**

- (1) If a company is to be formed as a community interest company, the documents delivered to the registrar of companies under section 10 of the Companies Act 1985 (memorandum, articles and statement of names and particulars of directors and secretary) must be accompanied by the prescribed formation documents.
- (2) “The prescribed formation documents” means such statutory declarations or other declarations or statements as are required by regulations to accompany the documents delivered under that section, in such form as may be approved in accordance with the regulations.
- (3) On receiving the documents delivered under that section and the prescribed formation documents the registrar of companies must (instead of registering the memorandum and articles)—
  - (a) forward a copy of each of the documents to the Regulator, and
  - (b) retain the documents pending the Regulator’s decision.
- (4) The Regulator must decide whether the company is eligible to be formed as a community interest company.
- (5) A company is eligible to be formed as a community interest company if—
  - (a) the memorandum and articles comply with the requirements imposed by and by virtue of section 32 and the company’s name complies with section 33, and
  - (b) the Regulator, having regard to the documents delivered under section 10 of the Companies Act 1985 (c. 6), the prescribed formation documents and any other relevant considerations, considers that the company will satisfy the community interest test and is not an excluded company.
- (6) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).
- (7) If the Regulator gives notice of a decision that the company is eligible to be formed as a community interest company, section 12 of the Companies Act 1985 (registration of memorandum and articles) applies; and if the registrar registers the memorandum and articles he must also retain and record the prescribed formation documents.
- (8) The certificate of incorporation under section 13 of the Companies Act 1985 (effect of registration) is to contain a statement that the company is a community interest company.
- (9) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.
- (10) If the Regulator decides that the company is not eligible to be formed as a community interest company, any subscriber to the memorandum may appeal to the Appeal Officer against the decision.

#### **37 Existing companies: requirements**

- (1) If a company is to become a community interest company, the company must—
  - (a) by special resolution alter its memorandum to state that it is to be a community interest company,

- (b) by special resolutions under the Companies Act 1985 make such alterations of its memorandum and articles as it considers necessary to comply with requirements imposed by and by virtue of section 32 or otherwise appropriate in connection with becoming a community interest company, and
  - (c) by special resolution change its name to comply with section 33.
- (2) Section 380(1) of the Companies Act 1985 (forwarding of copies of special resolutions to registrar of companies) must be complied with in relation to each of the special resolutions at the same time.
- (3) If the special resolutions include one under section 4 or 17 of the Companies Act 1985 (alterations of memorandum)—
  - (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
  - (b) section 380(1) has effect in relation to them as if it referred to 15 days after the relevant date.
- (4) If an application is made under section 5 of the Companies Act 1985 (c. 6) (objection to alteration of memorandum under section 4 or 17), the relevant date is—
  - (a) the date on which the court determines the application (or, if there is more than one application, the date on which the last to be determined by the court is determined), or
  - (b) such later date as the court may order.
- (5) If there is no application under section 5 of that Act, the relevant date is the end of the period for making such an application.
- (6) The copies of the special resolutions forwarded to the registrar of companies must be accompanied by—
  - (a) a copy of the memorandum and articles of the company as altered by the special resolutions, and
  - (b) the prescribed conversion documents.
- (7) “The prescribed conversion documents” means such statutory declarations or other declarations or statements as are required by regulations to accompany the copies of the special resolutions, in such form as may be approved in accordance with the regulations.

### **38 Existing companies: decisions etc.**

- (1) On receiving under section 37 the copies of the special resolutions, the memorandum and articles as altered by the special resolutions and the prescribed conversion documents, the registrar of companies must (instead of recording the special resolutions and entering a new name on the register)—
  - (a) forward a copy of each of the documents to the Regulator, and
  - (b) retain the documents pending the Regulator’s decision.
- (2) The alterations of the memorandum and articles made by the special resolutions are to take effect only as provided by this section.
- (3) The Regulator must decide whether the company is eligible to become a community interest company.
- (4) A company is eligible to become a community interest company if—

- (a) the memorandum and articles as altered by the special resolutions comply with the requirements imposed by and by virtue of section 32 and the company's name as so altered complies with section 33, and
  - (b) the Regulator, having regard to the special resolutions, the memorandum and articles as altered, the prescribed conversion documents and any other relevant considerations, considers that the company will satisfy the community interest test and is not an excluded company.
- (5) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).
- (6) If the Regulator gives notice of a decision that the company is eligible to become a community interest company, section 28(6) of the Companies Act 1985 (registration of new name) applies; and if the registrar of companies enters the new name of the company on the register the registrar must also retain and record the special resolutions and the prescribed conversion documents.
- (7) On the special resolutions being recorded, the alterations to the company's articles and memorandum made by the special resolutions take effect.
- (8) The certificate of incorporation under section 28(6) of the Companies Act 1985 (c. 6) is to contain a statement that the company is a community interest company.
- (9) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.
- (10) If the Regulator decides that the company is not eligible to become a community interest company, the company may appeal to the Appeal Officer against the decision.

### **39 Existing companies: charities**

- (1) A charitable company may not by special resolution change its name to comply with section 33 without the prior written consent of the Charity Commissioners.
- (2) If a charitable company contravenes subsection (1), the Charity Commissioners may apply to the High Court for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985.
- (3) If a charitable company becomes a community interest company, that does not affect the application of—
- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
  - (b) any property representing income which has previously accrued, or
  - (c) the income from any such property.
- (4) "Charitable company" means a company which is a charity, other than one to which section 40 applies.

### **40 Existing companies: Scottish charities**

- (1) A Scottish charitable company may not become a community interest company.
- (2) If a Scottish charitable company purports by special resolution to change its name to comply with section 33, the Commissioners of Inland Revenue may apply to the Court



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*Status: This is the original version (as it was originally enacted).*

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of Session for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985.

- (3) Regulations may repeal subsections (1) and (2); and subsections (4) to (7) have effect on and after the day on which regulations under this subsection come into force.
- (4) A Scottish charitable company may not by special resolution change its name to comply with section 33 without the prior written consent—
  - (a) if the company’s registered office is situated in Scotland, of the Scottish Charity Regulator, or
  - (b) if the company’s registered office is situated in England and Wales (or Wales), of both the Scottish Charity Regulator and the Charity Commissioners.
- (5) If a Scottish charitable company contravenes subsection (4)(a), the Scottish Charity Regulator may apply to the Court of Session for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985 (c. 6).
- (6) If a Scottish charitable company contravenes subsection (4)(b), the Scottish Charity Regulator or the Charity Commissioners may apply to the High Court for such an order.
- (7) If a Scottish charitable company becomes a community interest company, that does not affect the application of—
  - (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money’s worth, or any property representing property so acquired,
  - (b) any property representing income which has previously accrued, or
  - (c) the income from any such property.
- (8) In this section “Scottish charitable company” means a company which—
  - (a) is a Scottish charity, or
  - (b) not being a Scottish charity, is registered in Scotland and established for charitable purposes only.
- (9) Regulations under subsection (3) may define the expression “the Scottish Charity Regulator” for the purposes of this section.

### *Supervision by Regulator*

## **41 Conditions for exercise of supervisory powers**

- (1) In deciding whether and how to exercise the powers conferred by sections 42 to 51 the Regulator must adopt an approach which is based on the principle that those powers should be exercised only to the extent necessary to maintain confidence in community interest companies.
- (2) No power conferred on the Regulator by—
  - (a) section 45 (appointment of director),
  - (b) section 46 (removal of director),
  - (c) section 47 (appointment of manager), or
  - (d) section 48 (property),

is exercisable in relation to a community interest company unless the company default condition is satisfied in relation to the power and the company.

- (3) The company default condition is satisfied in relation to a power and a company if it appears to the Regulator necessary to exercise the power in relation to the company because—
  - (a) there has been misconduct or mismanagement in the administration of the company,
  - (b) there is a need to protect the company's property or to secure the proper application of that property,
  - (c) the company is not satisfying the community interest test, or
  - (d) if the company has community interest objects, the company is not carrying on any activities in pursuit of those objects.
- (4) The power conferred on the Regulator by section 49 (transfer of shares etc.) is not exercisable in relation to a community interest company unless it appears to the Regulator that the company is an excluded company.

## **42 Investigation**

- (1) The Regulator may—
  - (a) investigate the affairs of a community interest company, or
  - (b) appoint any person (other than a member of the Regulator's staff) to investigate the affairs of a community interest company on behalf of the Regulator.
- (2) Subsection (1)(b) is in addition to paragraph 5 of Schedule 3 (powers of Regulator exercisable by authorised members of staff) and does not affect the application of that paragraph to the Regulator's power under subsection (1)(a).
- (3) Schedule 7 (further provision about investigations under this section) has effect.

## **43 Audit**

- (1) The Regulator may by order require a community interest company to allow the annual accounts of the company to be audited by a qualified auditor appointed by the Regulator.
- (2) A person is a qualified auditor if he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989 (c. 40) (eligibility for appointment as auditor).
- (3) Sections 389A and 389B of the Companies Act 1985 (c. 6) (auditor's rights to information) apply in relation to an auditor appointed under this section as in relation to an auditor appointed under Chapter 5 of Part 11 of that Act.
- (4) On completion of the audit the auditor must make a report to the Regulator on such matters and in such form as the Regulator specifies.
- (5) The expenses of the audit, including the remuneration of the auditor, are to be paid by the Regulator.
- (6) An audit under this section is in addition to, and does not affect, any audit required by or by virtue of any other enactment.

#### **44 Civil proceedings**

- (1) The Regulator may bring civil proceedings in the name and on behalf of a community interest company.
- (2) Before instituting proceedings under this section the Regulator must give written notice to the company stating—
  - (a) the cause of action,
  - (b) the remedy sought, and
  - (c) a summary of the facts on which the proceedings are to be based.
- (3) Any director of the company may apply to the court for an order—
  - (a) that proposed proceedings are not to be instituted under this section, or
  - (b) that proceedings instituted under this section are to be discontinued.
- (4) On an application under subsection (3) the court may make such order as it thinks fit.
- (5) In particular the court may (as an alternative to ordering that proposed proceedings are not to be instituted under this section or that proceedings instituted under this section are to be discontinued) order—
  - (a) that the proposed proceedings may be instituted under this section, or the proceedings instituted under this section may be continued, on such terms and conditions as the court thinks fit,
  - (b) that any proceedings instituted by the company are to be discontinued, or
  - (c) that any proceedings instituted by the company may be continued on such terms and conditions as the court thinks fit.
- (6) The Regulator must indemnify the company against any costs (or expenses) incurred by it in connection with proceedings brought under this section.
- (7) Any costs (or expenses)—
  - (a) awarded to the company in connection with proceedings brought under this section, or
  - (b) incurred by the company in connection with the proceedings and which it is agreed should be paid by a defendant (or defender),are to be paid to the Regulator.

#### **45 Appointment of director**

- (1) The Regulator may by order appoint a director of a community interest company.
- (2) The person appointed may be anyone whom the Regulator thinks appropriate, other than a member of the Regulator's staff.
- (3) A person may be appointed as a director of a company under this section—
  - (a) whether or not the person is a member of the company, and
  - (b) irrespective of any provision made by the memorandum or articles of the company or a resolution of the company in general meeting.
- (4) An order appointing a person to be a director of a company under this section must specify the terms on which the director is to hold office; and those terms have effect as if contained in a contract between the director and the company.

- (5) The terms specified must include the period for which the director is to hold office, and may include terms as to the remuneration of the director by the company.
- (6) A director appointed under this section has all the powers of the directors appointed by the company (including powers exercisable only by a particular director or class of directors).
- (7) A director appointed under this section may not be removed by the company, but may be removed by the Regulator at any time.
- (8) Where—
  - (a) a person is appointed to be a director of the company under this section, or
  - (b) a person so appointed ceases to be a director of the company,the obligation which would otherwise be imposed on the company under section 288(2) of the Companies Act 1985 (c. 6) (requirement that company notify change among directors to registrar) is instead an obligation of the Regulator.
- (9) But if subsection (10) applies, section 288(2) applies as if the period within which the Regulator must send a notification to the registrar of companies is 14 days from the date on which the Regulator receives notification under that subsection.
- (10) Where a person appointed to be a director of the company under this section ceases to be a director of the company (otherwise than by removal under subsection (7)), the company must give notification of that fact to the Regulator in a form approved by the Regulator before the end of the period of 14 days beginning with the date on which the person ceases to be a director.
- (11) If the company fails to comply with subsection (10) it commits an offence.
- (12) A person guilty of an offence under subsection (11) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (13) The company may appeal to the Appeal Officer against an order under this section.

#### **46 Removal of director**

- (1) The Regulator may by order remove a director of a community interest company.
- (2) If a person has been removed under subsection (1)—
  - (a) the company may not subsequently appoint him a director of the company, and
  - (b) any assignment to the person of the office of director of the company is of no effect (even if approved by special resolution of the company).
- (3) The Regulator may by order suspend a director of the company pending a decision whether to remove him.
- (4) The maximum period for which a director may be suspended under subsection (3) is one year.
- (5) If the Regulator suspends a director under subsection (3) the Regulator may give directions in relation to the performance of the director's functions.
- (6) The Regulator may discharge an order made under subsection (1).

- (7) The discharge of an order made under subsection (1) does not reinstate the person removed by the order as a director of the company, but on the discharge of the order subsection (2) ceases to apply to the person.
- (8) The Regulator must from time to time review any order made under subsection (3) and, if it is appropriate to do so, discharge the order.
- (9) Before making an order under subsection (1) or (3) in relation to a director, the Regulator must give at least 14 days' notice to—
  - (a) the director, and
  - (b) the company.
- (10) Where an order is made in relation to a director under subsection (1) or (3) the director may appeal against the order—
  - (a) in England and Wales, to the High Court, or
  - (b) in Scotland, to the Court of Session.
- (11) The Regulator must, before the end of the period of 14 days beginning with the date on which—
  - (a) an order under subsection (1) is made or discharged,
  - (b) an order under subsection (3) is made or discharged or expires, or
  - (c) an order under subsection (1) or (3) is quashed on appeal,give notification of that event to the registrar of companies in a form approved by the registrar of companies.
- (12) Where subsection (11) imposes an obligation to notify the registrar of companies of an event, section 288(2) of the Companies Act 1985 (c. 6) (requirement that company notify change among directors to registrar) does not apply in respect of the event.

#### **47 Appointment of manager**

- (1) The Regulator may by order appoint a manager in respect of the property and affairs of a community interest company.
- (2) The person appointed may be anyone whom the Regulator thinks appropriate, other than a member of the Regulator's staff.
- (3) An order under subsection (1) may make provision as to the functions to be exercised by, and the powers of, the manager.
- (4) The order may in particular provide—
  - (a) for the manager to have such of the functions of the company's directors as are specified in the order, and
  - (b) for the company's directors to be prevented from exercising any of those functions.
- (5) In carrying out his functions the manager acts as the company's agent; and a person dealing with the manager in good faith and for value need not inquire whether the manager is acting within his powers.
- (6) The appointment of the manager does not affect—

- (a) any right of any person to appoint a receiver or manager of the company's property (including any right under section 51 of the Insolvency Act 1986 (c. 45)), or
  - (b) the rights of a receiver or manager appointed by a person other than the Regulator.
- (7) The manager's functions are to be discharged by him under the supervision of the Regulator; and the Regulator must from time to time review the order by which the manager is appointed and, if it is appropriate to do so, discharge it in whole or in part.
- (8) In particular, the Regulator must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the company.
- (9) The Regulator may apply to the court for directions in relation to any matter arising in connection with the manager's functions or powers.
- (10) On an application under subsection (9) the court may give such directions or make such orders as it thinks fit.
- (11) The costs of any application under subsection (9) are to be paid by the company.
- (12) Regulations may authorise the Regulator—
- (a) to require a manager to make reports,
  - (b) to require a manager to give security (or, in Scotland, to find caution) for the due exercise of the manager's functions, and
  - (c) to remove a manager in circumstances prescribed by the regulations.
- (13) Regulations may—
- (a) provide for a manager's remuneration to be payable from the property of the company, and
  - (b) authorise the Regulator to determine the amount of a manager's remuneration and to disallow any amount of remuneration in circumstances prescribed by the regulations.
- (14) The company may appeal to the Appeal Officer against an order under this section.

## **48 Property**

- (1) The Regulator may by order—
- (a) vest in the Official Property Holder any property held by or in trust for a community interest company, or
  - (b) require persons in whom such property is vested to transfer it to the Official Property Holder.
- (2) The Regulator—
- (a) may order a person who holds property on behalf of a community interest company, or on behalf of a trustee of a community interest company, not to part with the property without the Regulator's consent, and
  - (b) may order any debtor of a community interest company not to make any payment in respect of the debtor's liability to the company without the Regulator's consent.
- (3) The Regulator may by order restrict—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the transactions which may be entered into by a community interest company, or
  - (b) the nature or amount of the payments that a community interest company may make,and the order may in particular provide that transactions may not be entered into or payments made without the Regulator's consent.
- (4) The vesting or transfer of property under subsection (1) does not constitute a breach of a covenant or condition against alienation, and no right listed in subsection (5) operates or becomes exercisable as a result of the vesting or transfer.
- (5) The rights are—
  - (a) a right of reverter (or, in Scotland, the right of the fiar on the termination of a liferent),
  - (b) a right of pre-emption,
  - (c) a right of forfeiture,
  - (d) a right of re-entry,
  - (e) a right of irritancy,
  - (f) an option, and
  - (g) any right similar to those listed in paragraphs (a) to (f).
- (6) The Regulator must from time to time review any order under this section and, if it is appropriate to do so, discharge the order in whole or in part.
- (7) On discharging an order under subsection (1) the Regulator may make any order as to the vesting or transfer of the property, and give any directions, which he considers appropriate.
- (8) If a person fails to comply with an order under subsection (1)(b), the Regulator may certify that fact in writing to the court.
- (9) If, after hearing—
  - (a) any witnesses who may be produced against or on behalf of the alleged offender, and
  - (b) any statement which may be offered in defence,the court is satisfied that the offender failed without reasonable excuse to comply with the order, it may deal with him as if he had been guilty of contempt of the court.
- (10) A person who contravenes an order under subsection (2) or (3) commits an offence, but a prosecution may be instituted in England and Wales only with the consent of the Regulator or the Director of Public Prosecutions.
- (11) A person guilty of an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) Subsections (8) to (10) do not prevent the bringing of civil proceedings in respect of a contravention of an order under subsection (1)(b), (2) or (3).
- (13) The company and any person to whom the order is directed may appeal to the Appeal Officer against an order under subsection (1) or (2).
- (14) The company may appeal to the Appeal Officer against an order under subsection (3).

**49 Transfer of shares etc.**

- (1) If a community interest company has a share capital, the Regulator may by order transfer specified shares in the company to specified persons.
- (2) If a community interest company is a company limited by guarantee, the Regulator may by order—
  - (a) extinguish the interests in the company of specified members of the company (otherwise than as shareholders), and
  - (b) appoint a new member in place of each member whose interest has been extinguished.
- (3) An order under subsection (1) may not transfer any shares in respect of which—
  - (a) a dividend may be paid, or
  - (b) a distribution of the company's assets may be made if the company is wound up.
- (4) An order under this section in relation to a company—
  - (a) may only transfer shares to, and appoint as new members, persons who have consented to the transfer or appointment, and
  - (b) may be made irrespective of any provision made by the memorandum or articles of the company or a resolution of the company in general meeting.
- (5) The company and any person from whom shares are transferred by the order may appeal to the Appeal Officer against an order under subsection (1).
- (6) The company and any person whose interest is extinguished by the order may appeal to the Appeal Officer against an order under subsection (2).
- (7) “Specified”, in relation to an order, means specified in the order.

**50 Petition for winding up**

- (1) The Regulator may present a petition for a community interest company to be wound up if the court is of the opinion that it is just and equitable that the company should be wound up.
- (2) Subsection (1) does not apply if the company is already being wound up by the court.
- (3) In section 124 of the Insolvency Act 1986 (c. 45) (application for winding up), after subsection (4) insert—

“(4A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.”

**51 Dissolution and striking off**

- (1) If a community interest company has been dissolved, the Regulator may apply under section 651 of the Companies Act 1985 (c. 6) for an order declaring the dissolution to have been void.
- (2) If a community interest company has been struck off the register under section 652 of the Companies Act 1985 (defunct companies), the Regulator may apply under section 653(2) of that Act for an order that the company's name be restored.



- (3) If an application under section 652A of the Companies Act 1985 (application to strike name of private company off register) is made on behalf of a community interest company, section 652B(6) of that Act (persons to be notified of application) is to be treated as also requiring a copy of the application to be given to the Regulator.

### *Change of status*

## **52 Re-registration**

- (1) A community interest company is excluded from re-registering under section 49 of the Companies Act 1985 (c. 6) (re-registration of limited company as unlimited).
- (2) If a community interest company which is not a public company re-registers as a public company under section 43 of the Companies Act 1985, or a community interest company which is a public company re-registers as a private company under section 53 of that Act, the certificate of incorporation issued under section 47(1)(b) or 55(1)(b) of that Act is to contain a statement that the company is a community interest company.
- (3) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.

## **53 Ceasing to be a community interest company**

A community interest company may not cease to be a community interest company except by dissolution or as provided—

- (a) by sections 54 and 55 (becoming a charity or a Scottish charity), or
- (b) if regulations are made under section 56 (becoming an industrial and provident society), by the regulations.

## **54 Becoming a charity or a Scottish charity: requirements**

- (1) If a community interest company is to cease being a community interest company and become a charity or a Scottish charity, the company must—
- (a) by special resolution alter its memorandum so that it does not state that it is to be a community interest company,
- (b) by special resolutions under the Companies Act 1985 make such alterations of its memorandum and articles as it considers appropriate, and
- (c) by special resolution change its name so that it does not comply with section 33.
- (2) Section 380(1) of the Companies Act 1985 (forwarding of copies of special resolutions to registrar of companies) must be complied with in relation to each of the special resolutions at the same time.
- (3) If the special resolutions include one under section 4 or 17 of the Companies Act 1985 (alterations of memorandum)—
- (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
- (b) section 380(1) has effect in relation to them as if it referred to 15 days after the relevant date.

- (4) If an application is made under section 5 of the Companies Act 1985 (objection to alteration of memorandum under section 4 or 17), the relevant date is—
  - (a) the date on which the court determines the application (or, if there is more than one application, the date on which the last to be determined by the court is determined), or
  - (b) such later date as the court may order.
- (5) If there is no application under section 5 of that Act, the relevant date is the end of the period for making such an application.
- (6) The copies of the special resolutions forwarded to the registrar of companies must be accompanied by—
  - (a) a copy of the memorandum and articles of the company as altered by the special resolutions, and
  - (b) a statement under subsection (7) or, if the company’s registered office is situated in Scotland and the company is to become a Scottish charity, a statement under subsection (8).
- (7) A statement under this subsection is a statement by the Charity Commissioners that in their opinion, if the special resolutions take effect and the company ceases to be a community interest company the company will be a charity and will not be an exempt charity.
- (8) A statement under this subsection is a statement by the Commissioners of Inland Revenue that—
  - (a) the company has claimed exemption under section 505(1) of the Income and Corporation Taxes Act 1988 (c. 1), and
  - (b) if the special resolutions take effect and the company ceases to be a community interest company the company will be given such intimation as is mentioned in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).
- (9) “Exempt charity” has the same meaning as in the Charities Act 1993 (c. 10) (see section 96 of that Act).

## **55      Becoming a charity or a Scottish charity: decisions etc.**

- (1) On receiving under section 54 the copies of the special resolutions, the memorandum and articles as altered by the special resolutions and the statement, the registrar must (instead of recording the special resolutions and entering a new name on the register) —
  - (a) forward a copy of each of the documents to the Regulator, and
  - (b) retain them pending the Regulator’s decision.
- (2) The alterations of the memorandum and articles made by the special resolutions are to take effect only as provided by this section.
- (3) The Regulator must decide whether the company is eligible to cease being a community interest company.
- (4) The company is eligible to cease being a community interest company if it has complied with section 54 and none of the following applies—

- (a) the Regulator has under section 43 appointed an auditor to audit the company's annual accounts and the audit has not been completed,
  - (b) civil proceedings instituted by the Regulator in the name of the company under section 44 have not been determined or discontinued,
  - (c) a director of the company holds office by virtue of an order under section 45,
  - (d) a director of the company is suspended under section 46(3),
  - (e) there is a manager in respect of the property and affairs of the company appointed under section 47,
  - (f) the Official Property Holder holds property as trustee for the company,
  - (g) an order under section 48(2) or (3) is in force in relation to the company,
  - (h) a petition has been presented for the company to be wound up.
- (5) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).
- (6) If the Regulator gives notice of a decision that the company is eligible to cease being a community interest company, section 28(6) of the Companies Act 1985 (c. 6) (registration of new name) applies; and if the registrar of companies enters the new name of the company on the register he must also retain and record the special resolutions and the statement.
- (7) On the date on which the certificate of incorporation is issued the alterations to the company's articles and memorandum made by the special resolutions take effect and the company ceases to be a community interest company.
- (8) If the Regulator decides that the company is not eligible to cease being a community interest company, the company may appeal to the Appeal Officer against the decision.

## **56      Becoming an industrial and provident society**

- (1) Unless regulations make provision to the contrary, a community interest company may not convert itself into a registered society under section 53 of the Industrial and Provident Societies Act 1965 (c. 12).
- (2) If regulations make provision allowing the conversion of community interest companies under that section they may include provision modifying that section in its application by virtue of the regulations.

### *Supplementary*

## **57      Fees**

- (1) Regulations may require the payment of such fees in connection with the Regulator's functions as may be specified in the regulations.
- (2) The regulations may provide for fees to be paid to the registrar of companies (rather than to the Regulator).
- (3) The Regulator may charge a fee for any service which is provided otherwise than in pursuance of an obligation imposed by law, other than the provision of guidance which the Regulator considers to be of general interest.
- (4) Fees paid by virtue of this section are to be paid into the Consolidated Fund.

**58 Extension of provisions about registrar etc.**

Regulations may make amendments or modifications of any provision contained in—

- (a) Part 24 of the Companies Act 1985 (registrar), or
- (b) Part 25 of that Act (miscellaneous and supplementary),

in consequence of any provision contained in, or made under, this Part (in particular, so as to provide that references to the Companies Acts are to include provisions contained in, or made under, this Part).

**59 Information**

- (1) Regulations may require the registrar of companies—
  - (a) to notify the Regulator of matters specified in the regulations, and
  - (b) to provide the Regulator with copies of documents specified in the regulations.
- (2) After section 71 of the Bankruptcy (Scotland) Act 1985 (c. 66) insert—

**“71A Further duty of Accountant in Bankruptcy**

The Accountant in Bankruptcy shall, on receiving any notice under section 109(1) of the Insolvency Act 1986 in relation to a community interest company, forward a copy of that notice to the Regulator of Community Interest Companies.”

- (3) In section 31(2) of the Data Protection Act 1998 (c. 29) (restricted access to data processed for specified purposes)—
  - (a) in paragraphs (b), (c) and (d), after “charities” insert “or community interest companies”, and
  - (b) in paragraph (b), after “trustees” insert “, directors”.
- (4) A public authority may disclose to the Regulator, for any purpose connected with the exercise of the Regulator’s functions, information received by the authority in connection with its functions.
- (5) The Regulator may disclose to a public authority any information received by the Regulator in connection with the functions of the Regulator—
  - (a) for a purpose connected with the exercise of those functions, or
  - (b) for a purpose connected with the exercise by the authority of its functions.
- (6) In deciding whether to disclose information to a public authority in a country or territory outside the United Kingdom the Regulator must have regard to the considerations listed in section 243(6) of the Enterprise Act 2002 (c. 40) (overseas disclosures), but as if the reference to information of a kind to which section 237 of that Act applies were to information of the kind the Regulator is considering disclosing.
- (7) The powers to disclose information in subsections (4) and (5) are subject to—
  - (a) any restriction on disclosure imposed by or by virtue of an enactment, and
  - (b) any express restriction on disclosure subject to which information was supplied.
- (8) Information may be disclosed under subsection (4) or (5) subject to a restriction on its further disclosure.

- (9) A person who discloses information in contravention of a restriction imposed under subsection (8) is guilty of an offence, but a prosecution may be instituted in England or Wales only with the consent of the Regulator or the Director of Public Prosecutions.
- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) “Public authority” means a person or body having functions of a public nature.

## **60 Offences**

- (1) If an offence under this Part committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on the part of an officer,the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) “Officer” means a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity.
- (3) “Director”—
  - (a) includes a shadow director, and
  - (b) if the affairs of a body corporate are managed by its members, means a member of the body.

## **61 Orders made by Regulator**

- (1) An order made by the Regulator under this Part must be given to the community interest company in relation to which it is made and—
  - (a) if the order is under section 46(1) or (3), to the director removed or suspended,
  - (b) if the order is under section 48(1)(b) or (2), to the person to whom the order is directed,
  - (c) if the order is under section 49(1), to the persons from and to whom shares are transferred,
  - (d) if the order is under section 49(2), to the person whose interest is extinguished and any person appointed in his place.
- (2) Orders made by the Regulator under or by virtue of this Part may contain any incidental or supplementary provisions the Regulator considers expedient.
- (3) When discharging an order made under or by virtue of this Part, the Regulator may make savings and transitional provisions.
- (4) A document certified by the Regulator to be a true copy of an order made by the Regulator is evidence of the order without further proof; and a document purporting to be so certified shall, unless the contrary is proved, be taken to be so certified.
- (5) Where the Regulator makes an order or decision against which an appeal lies under or by virtue of this Part, the Regulator must give reasons for the order or decision to the persons entitled to appeal against it.

## 62 Regulations

- (1) Any power to make regulations under this Part is exercisable by the Secretary of State by statutory instrument.
- (2) Regulations under this Part may make different provision for different cases.
- (3) Regulations under this Part may confer or impose functions on the Regulator or any other person specified in the regulations (and, unless made under paragraph 4 of Schedule 4, may provide for appeals to the Appeal Officer from a person on whom functions are conferred by the regulations).
- (4) No regulations to which this subsection applies are to be made unless a draft of the statutory instrument containing the regulations (whether or not together with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Subsection (4) applies to regulations under—
  - (a) section 30,
  - (b) section 31,
  - (c) section 32,
  - (d) section 34,
  - (e) section 35,
  - (f) section 36,
  - (g) section 37,
  - (h) section 47, and
  - (i) section 56.
- (6) A statutory instrument containing regulations under this Part is (unless a draft of it has been approved by each House of Parliament under subsection (4)) subject to annulment in pursuance of a resolution of either House of Parliament.

## 63 Interpretation

- (1) In this Part—
  - “administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986 (c. 45),
  - “the Appeal Officer” has the meaning given by section 28(1),
  - “charity” (except in the phrase “Scottish charity”) has the same meaning as in the Charities Act 1993 (c. 10) (see section 96 of that Act),
  - “community interest object” is to be construed in accordance with section 35(3),
  - “the community interest test” is to be construed in accordance with section 35(2),
  - “enactment” includes an Act of the Scottish Parliament,
  - “excluded company” is to be construed in accordance with section 35(6),
  - “the Official Property Holder” has the meaning given by section 29(1),
  - “the Regulator” has the meaning given by section 27(1), and
  - “Scottish charity” has the meaning given by section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

- (2) Any expression used in this Part and in the Companies Act 1985 (c. 6) has the same meaning in this Part as in that Act.