

2004 No. 3322(C. 154)

COMPANIES

The Companies (Audit, Investigations and Community Enterprise) Act 2004 (Commencement) and Companies Act 1989 (Commencement No 18) Order 2004

Made - - - -

9th December 2004

The Secretary of State, in exercise of her powers under section 215(2) of the Companies Act 1989(a) and section 65 of the Companies (Audit, Investigations and Community Enterprise) Act 2004(b), hereby makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Companies (Audit, Investigations and Community Enterprise) Act 2004 (Commencement) and Companies Act 1989 (Commencement No 18) Order 2004.

(2) In this Order—

“the 1985 Act” means the Companies Act 1985(c); and

“the 2004 Act” means the Companies (Audit, Investigations and Community Enterprise) Act 2004.

(3) References in articles 3 to 11 to sections are references to those sections of the 1985 Act; and the references in article 3 to Schedule 4A and in article 7 to Schedule 24 are references to those Schedules to that Act.

(4) References in this Order to old sections of the 1985 Act are references to the sections in question as they had effect before their amendment by the 2004 Act; and references to new sections of that Act are references to the sections in question as inserted by the 2004 Act.

Commencement

2.—(1) Section 46 of and Schedule 13 to the Companies Act 1989(d) and the provisions of the 2004 Act set out in Schedule 1 hereto shall come into force on 1st January 2005.

(2) The provisions of the 2004 Act set out in Schedule 2 hereto shall, subject to articles 4 to 13 below, come into force on 6th April 2005.

(3) The provisions of the 2004 Act set out in Schedule 3 hereto shall come into force on 1st July 2005.

(a) 1989 c. 40.

(b) 2004 c. 27.

(c) 1985 c. 6.

(d) Section 46 and Schedule 13 are amended by sections 3 and 5 respectively of 2004 c. 27.

(4) The provisions of the 2004 Act set out in Schedule 4 hereto shall, subject to article 3 below, come into force on 1st October 2005.

Transitional provision for section 7 of the 2004 Act

3. New section 390B(a), and the repeal of old section 390A(3) and of words in paragraph 1(1) of Schedule 4A relating thereto(b), shall have no effect in relation to the accounts of a company for a financial year beginning before 1st October 2005.

Transitional provision for section 9 of the 2004 Act

4. New sections 234(2A) and 234ZA(c) shall not apply in relation to any report of the directors of a company prepared under section 234 concerning a financial year beginning before 1st April 2005 or ending before 6th April 2005.

Transitional provision for section 19 of the 2004 Act

5. New section 309A(d) shall have no effect in relation to provisions made before 29th October 2004 which are not void under old section 310(e).

Authorisations under old section 447 of the 1985 Act effective immediately before 6th April 2005

6. An authorisation under old section 447(3) which was effective immediately before 6th April 2005 shall have effect on and after 6th April 2005 as though it were an authorisation under new section 447(3)(f).

Outstanding requirements under old section 447 of the 1985 Act

7.—(1) An outstanding requirement imposed under old section 447 shall be treated, on and after 6th April 2005, as a requirement imposed under new section 447, whether or not the requirement could have been imposed under new section 447.

(2) But old section 447(6) and (7) shall apply, and section 453C(g) shall not apply, in relation to a failure to comply with such an outstanding requirement.

(3) The following shall continue to have effect for the purposes of paragraph (2):

- (a) the references to section 447 in sections 732, 733 and 734(h); and
- (b) the entry in Schedule 24 relating to old section 447(6)(i).

(4) Where a person provides information on or after 6th April 2005 in purported compliance with an outstanding requirement and in doing so commits an offence under section 451, the court, on summary conviction of that person for that offence, may not impose a term of imprisonment greater than six months.

(5) For the purposes of this article, an outstanding requirement is a requirement imposed under old section 447, either in directions given by the Secretary of State or by a person authorised by the Secretary of State, which—

- (a) was imposed before 6th April 2005;

(a) Section 390B is substituted by section 7(1) of 2004 c.27.
(b) The repeals are in section 7(2) and 3 of and Schedule 8 to 2004 c. 27.
(c) Sections 234(2A) and 234ZA are inserted by section 9 of 2004 c. 27.
(d) Section 309A is inserted by section 19 of 2004 c. 27.
(e) Section 310 was amended by section 137(1) of 1989 c.40 and is further amended by section 19 of 2004 c. 27.
(f) Section 447 is substituted by section 21 of 2004 c. 27.
(g) Section 453C is inserted by section 24 of 2004 c. 27.
(h) Section 732 is amended by paragraphs 7 and 22 of Schedule 2 to 2004 c. 27, section 733 by paragraphs 8 and 23 and section 734 by paragraphs 9 and 24.
(i) The entry in Schedule 24 relating to section 447(6) is repealed by Schedule 8 to 2004 c. 27.

- (b) was required to be complied with on or after that date; and
- (c) had not been complied with before that date.

Power to take copies of or extracts from documents produced under old section 447 of the 1985 Act before 6th April 2005

8. The powers in new section 447(7) are exercisable on and after 6th April 2005 in relation to any document produced before that date in pursuance of old section 447.

Use in evidence of statements made in compliance with requirements under section 447 of the 1985 Act

9.—(1) Subsections (8) to (8B) of old section 447 continue to have effect on and after 6th April 2005 in relation to any statement made before that date as if the reference in subsection (8B)(a) to section 451 were a reference to old or new section 451.

(2) In its application to any statement made on or after 6th April 2005 by a person in compliance with an outstanding requirement imposed under old section 447 or a requirement imposed under new section 447, section 447A has effect as if the relevant offences in section 447A(3) included the offences under old sections 451 and 447(6).

Security of information obtained under old section 447 of the 1985 Act

10. New section 449 applies, and old section 449 does not apply, to information to which old section 449(1) applied immediately before 6th April 2005.

Power to enter and remain on premises: persons authorised under old section 447 of the 1985 Act

11. For the purposes of sections 453A and 453B(a), and for the purposes of section 453C as it relates to section 453A, an investigator includes a person authorised for the purposes of old section 447 whose authorisation was effective immediately before 6th April 2005.

Use of information obtained under the 1985 Act for the purposes of proceedings under section 8 of the Company Directors Disqualification Act 1986

12. The references to sections 447 and 448 of the 1985 Act in section 8(1A)(b)(i) of the Company Directors Disqualification Act 1986(b) are references to either the old or the new sections.

Use of information obtained under Part 14 of the 1985 Act for the purposes of proceedings under section 124A of the Insolvency Act 1986

13. The reference to information obtained under Part 14 of the 1985 Act in section 124A(1)(a) of the Insolvency Act 1986(c), insofar as it is a reference to information obtained under section 447 or 448 of the 1985 Act, is a reference to information obtained either the old or the new section.

Jacqui Smith,
Minister for Industry, Regions and Deputy
Minister for Women & Equality
Department of Trade and Industry

9th December 2004

(a) Sections 453A and 453B are inserted by section 23 of 2004 c. 27.
(b) 1986 c. 46: section 8(1A) was inserted by S.I. 2001/3649.
(c) 1986 c. 45: section 124A was inserted by section 63 of 1989 c. 40.

SCHEDULE 1

Article 2(1)

PROVISIONS OF THE 2004 ACT COMING INTO FORCE ON 1st JANUARY 2005

Sections 3 to 5.

Section 10.

Sections 13 and 14.

Sections 16 to 18.

Section 25 in respect of paragraphs 1, 3 and 4 of Schedule 2.

Section 27.

Section 64 in respect of the entries in Schedule 8 specified below.

In Schedule 2, paragraphs 1, 3 and 4.

Schedule 3.

In Schedule 8, the entries relating to—

the 1985 Act, sections 245C(6) and 256(3);

Companies Act 1989, section 48(3);

Companies (Northern Ireland) Order 1990;

Competition Act 1998;

Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999;

Enterprise Act 2002.

SCHEDULE 2

Article 2(2)

PROVISIONS OF THE 2004 ACT COMING INTO FORCE ON 6th APRIL 2005

Sections 1 and 2.

Section 6.

Sections 8 and 9.

Sections 11 and 12.

Section 15.

Sections 19 to 24.

Section 25 in respect of the provisions in Schedule 2 specified below.

Section 64 in respect of the entries in Schedule 8 specified below.

Schedule 1.

In Schedule 2—

paragraph 2;

paragraphs 5 to 24;
paragraph 25, except in respect of paragraphs 40 and 45 of new Schedule 15D to the 1985 Act;
paragraphs 26 to 28;
paragraphs 30 and 31.

In Schedule 8, the entries relating to—
the 1985 Act, sections 310 and 734(1) and Schedule 24;
Insolvency Act 1985;
Insolvency Act 1986;
Companies Act 1989, sections 63, 65, 67, 69 and 120;
Friendly Societies Act 1992;
Pensions Act 1995;
Bank of England Act 1998; and
Youth Justice and Criminal Evidence Act 1999.

SCHEDULE 3

Article 2(3)

PROVISIONS OF THE 2004 ACT COMING INTO FORCE ON 1st JULY 2005

Section 25 so far as not already in force.

Section 26.

Sections 28 to 63.

Section 64 in respect of the entry in Schedule 8 relating to the 1985 Act, section 27(4).

Schedule 2 so far as not already in force.

Schedules 4 to 7.

In Schedule 8, the entry relating to the 1985 Act, section 27(4).

SCHEDULE 4

Article 2(4)

PROVISIONS OF THE 2004 ACT COMING INTO FORCE ON 1st OCTOBER 2005

Section 7.

Schedule 8 so far as not already in force.

Section 64 so far as not already in force.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force—

- on 1 January 2005 the provisions of the Companies (Audit, Investigations and Community Enterprise) Act 2004 set out in Schedule 1,
- on 6 April 2005 the provisions set out in Schedule 2,
- on 1 July 2005 the provisions set out in Schedule 3, and
- on 1 October 2005, all remaining provisions, set out in Schedule 4.

Article 3 contains a transitional provision under which section 7 will not apply to company accounts for periods beginning before 1 July 2005.

Article 4 contains a transitional provision under which section 8 will not apply to directors' reports concerning financial years beginning before 1 April 2005 or ending before 6 April 2005.

Article 5 contains a transitional provision under which section 19 will not cause provisions for indemnifying directors from liability which were made on or before the date of Royal assent, 28 October 2004, to become void if they were previously not void.

Articles 6 to 13 contains transitional provisions relating to company investigations.

The Act will be wholly in force on 1 October 2005.

The Order also brings section 46 of and Schedule 13 to the Companies Act 1989 (“the 1989 Act”) into force on 1 January 2005:

- (a) the provisions of the 1989 Act brought into force before the making of the Companies Act 1989 (Commencement No 15 and Transitional and Savings Provisions) Order 1995 (SI 1995/1352) are set out in a note appended to that Order;
- (b) that 1995 Order brought—
 - (i) section 140(1) to (6);
 - (ii) paragraph 20 of Schedule 19; and
 - (iii) repeals by Schedule 24 in section 464 of the 1985 Act and of the definition of “annual return” in section 744 of that Act,into force on 3 July 1995, subject to transitional and saving provisions;
- (c) the Companies Act 1989 (Commencement No 16) Order 1995 (SI 1995/1591) brought sections 171, 176 and 181 into force on 4 July 1995;
- (d) the Companies Act 1989 (Commencement No 17) Order 1998 (SI 1998/1747) brought sections 185 and 186 into force on 10 August 1998.

STATUTORY INSTRUMENTS

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