
STATUTORY INSTRUMENTS

1990 No. 1504

The Companies (No. 2) (Northern Ireland) Order 1990

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Companies (No. 2) (Northern Ireland) Order 1990 and shall come into operation on such day or days as the Head of the Department may by order appoint.

(2) An order under paragraph (1) may—

- (a) contain such transitional provisions and savings as appear to the Head of the Department to be necessary or expedient;
- (b) amend any statutory provision which refers to the coming into operation of a provision brought into operation by the order so as to substitute a reference to the actual date on which it comes into operation.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽¹⁾ shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of Economic Development;

“the Companies Order” means the Companies (Northern Ireland) Order 1986⁽²⁾;

“the Insider Dealing Order” means the Companies Securities (Insider Dealing) (Northern Ireland) Order 1986⁽³⁾;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989⁽⁴⁾.

(1) 1954 c. 33 (N.I.)
(2) 1986 NI 6
(3) 1986 NI 8
(4) 1989 NI 19

PART II

INVESTIGATIONS AND POWERS TO OBTAIN INFORMATION

Amendments of the Companies Order

Investigations by inspectors not leading to published report

3. In Article 425 of the Companies Order (appointment of inspectors by Department), after paragraph (2) (investigation of circumstances suggesting misconduct) insert—

“(2A) Inspectors may be appointed under paragraph (2) on terms that any report they may make is not for publication; and in such a case, the provisions of Article 430(3) (availability and publication of inspectors' reports) do not apply.”.

Production of documents and evidence to inspectors

4.—(1) Article 427 of the Companies Order (production of documents and evidence to inspectors) is amended as follows.

(2) In paragraph (1) (duty of officers to assist inspectors), for “books and documents” substitute “documents”.

(3) For paragraph (2) (power to require production of documents, attendance or other assistance) substitute—

“(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him—

- (a) to produce to them any documents in his custody or power relating to that matter,
- (b) to attend before them, and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it is that person's duty to comply with the requirement.”.

(4) For paragraph (3) (power to examine on oath) substitute—

“(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.”.

(5) After paragraph (5) insert—

“(6) In this Article “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.”.

(6) In Article 429 of the Companies Order (obstruction of inspectors treated as contempt of court), for paragraphs (1) and (2) substitute—

“(1) If any person—

- (a) fails to comply with Article 427(1)(a) or (c),
- (b) refuses to comply with a requirement under Article 427(1)(b) or (2), or
- (c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the court.”.

Duty of inspectors to report

5. In Article 430 of the Companies Order (inspectors' reports), after paragraph (1A) insert—

“(1B) If it appears to the Department that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, it may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(1C) Where an investigation is the subject of a direction under paragraph (1B), the inspectors shall make a final report to the Department only where—

- (a) they were appointed under Article 425(1) (appointment in pursuance of an order of the court), or
- (b) the Department directs them to do so.”.

Power to bring civil proceedings on the company's behalf

6. In Article 431 of the Companies Order (power to bring civil proceedings on the company's behalf), for the opening words of paragraph (1) down to “it appears to the Department” substitute “If from any report made or information obtained under this Part it appears to the Department”.

Expenses of investigating a company's affairs

7.—(1) Article 432 of the Companies Order (expenses of investigating a company's affairs) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The expenses of an investigation under any of the powers conferred by this Part shall be defrayed in the first instance by the Department but it may recover those expenses from the persons liable in accordance with this Article.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Department may determine in respect of general staff costs and overheads.”.

(3) In paragraph (4) for “the inspectors' report” substitute “an inspectors' report”.

(4) For paragraph (5) substitute—

“(5) Where inspectors were appointed—

- (a) under Article 424, or
- (b) on an application under Article 435(3),

the applicant or applicants for the investigation is or are liable to such extent (if any) as the Department may direct.”.

Power of Department to present winding-up petition

8.—(1) Article 433 of the Companies Order (power of Department to present winding-up petition) is repealed; but the following amendments have the effect of re-enacting that provision, with modifications.

(2) In Article 104(5) of the Insolvency Order (application by Department for company to be wound up by the court), for sub-paragraph (b) substitute—

“(b) in a case falling within Article 104A.”.

(3) After that Article insert—

“Petition for winding up on grounds of public interest

104A.—(1) Where it appears to the Department from—

- (a) any report made or information obtained under Part XV of the Companies Order (company investigations, &c.),
- (b) any report made under Article 16A of the Insider Dealing Order,
- (c) any report made under section 94 of the Financial Services Act 1986 or any information obtained under section 105 of that Act,
- (d) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or
- (e) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, it may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

(2) This Article does not apply if the company is already being wound up by the court.”

Inspectors' reports as evidence

9. In Article 434 of the Companies Order (inspectors' reports to be evidence), in paragraph (1) for “Article 424 or 425” substitute “this Part”.

Investigation of company ownership

10. In Article 435 of the Companies Order (power to investigate company ownership), for paragraph (3) (investigation on application by members of company) substitute—

“(3) If an application for investigation under this Article with respect to particular shares or debentures of a company is made to the Department by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under Article 424(2)(a) or (b), then, subject to the following provisions, the Department shall appoint inspectors to conduct the investigation applied for.

(3A) The Department shall not appoint inspectors if it is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Department is satisfied that it is unreasonable for it to be investigated.

(3B) The Department may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as it may by order subject to negative resolution specify, for payment of the costs of the investigation.

(3C) If on an application under paragraph (3) it appears to the Department that the powers conferred by Article 437 are sufficient for the purposes of investigating the matters which inspectors would be appointed to investigate, it may instead conduct the investigation under that Article.”

Department’s power to require production of documents

11.—(1) Article 440 of the Companies Order (power of Department to require production of documents) is amended as follows.

(2) Omit paragraph (1) (bodies in relation to which powers exercisable), and—

- (a) in paragraphs (2) and (3) for “any such body” substitute “a company”,
- (b) in paragraphs (4) and (5) for “any body” and “a body” substitute “a company”, and

- (c) in paragraphs (5) and (6) for “the body” substitute “the company”.
- (3) For “books or papers”, wherever occurring, substitute “documents”.
- (4) In paragraph (3) (power to authorise officer to require production of documents) after “an officer of the Department” insert “or any other competent person” and for “the officer” substitute “he”.
- (5) In paragraph (4) (power to require production of documents in possession of third party) after “an officer of the Department” and after “the officer” (twice) insert “or other person”.
- (6) In paragraph (6), for the second sentence substitute—
“Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.”.
- (7) After paragraph (8) insert—
“(9) In this Article “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.”.
- (8) In Schedule 23 to the Companies Order (punishment of offences), in the entry relating to Article 440(6), for “books and papers” substitute “documents”.

Entry and search of premises

- 12.—(1)** For Article 441 of the Companies Order (entry and search of premises) substitute—

“Entry and search of premises

441.—(1) A justice of the peace may issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.

(2) A justice of the peace may also issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department, or by a person appointed or authorised to exercise powers under this Part—

- (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
 - (b) that the Department, or the person so appointed or authorised, has power to require the production of the documents under this Part, and
 - (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.
- (3) A warrant under this Article shall authorise a constable, together with any other person named in it and any other constables—
- (a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in paragraph (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

- (c) to take copies of any such documents; and
- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) If in the case of a warrant under paragraph (2) the justice of the peace is satisfied by complaint on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in paragraph (3) to be taken in relation to such documents.

(5) A warrant under this Article shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(6) Any documents of which possession is taken under this Article may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this Article or fails without reasonable excuse to comply with any requirement imposed in accordance with paragraph (3)(d) is guilty of an offence and liable to a fine.

Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.

(8) For the purposes of Articles 442 and 444A (provision for security of information) documents obtained under this Article shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.

(9) In this Article “document” includes information recorded in any form.”.

(2) In Schedule 23 to the Companies Order (punishment of offences), in the entry relating to Article 441(5)—

- (a) in the first column for “441(5)” substitute “441(7)”, and
- (b) for the entry in the second column substitute—

“Obstructing the exercise of any rights conferred by a warrant or failing to comply with a requirement imposed under paragraph (3)(d).”.

Provision for security of information obtained

13.—(1) Article 442 of the Companies Order (provision for security of information obtained) is amended as follows.

(2) In paragraph (1) (purposes for which disclosure permitted)—

- (a) in the opening words for “body” (twice) substitute “company”;
- (b) for sub-paragraph (c) substitute—

“(c) for the purposes of enabling or assisting any inspector appointed under this Part, Article 16A of the Insider Dealing Order or section 94 of the Financial Services Act 1986, to discharge his functions;”;

(c) after that sub-paragraph insert—

“(cc) for the purpose of enabling or assisting any person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, Article 440 of this Order, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989 to discharge his functions;”;

- (d) in sub-paragraph (d) after “Insider Dealing Order” insert “Part III of the Companies (Northern Ireland) Order 1990, Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990”;
- (e) omit sub-paragraph (e);
- (f) in sub-paragraph (h) for “(n) or (p)” substitute “or (n)”;
- (g) after that sub-paragraph insert—
 - “(hh) for the purpose of enabling or assisting a body established by order under Article 48 of the Companies (Northern Ireland) Order 1990 to discharge its functions under Part III of that Order, or of enabling or assisting a recognised supervisory or qualifying body within the meaning of that Part to discharge its functions as such;”;
- (h) after sub-paragraph (l) insert—
 - “(ll) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the discharge by a public servant of his duties;”;
- (i) for sub-paragraph (m) substitute—
 - “(m) for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.”.
- (3) For paragraph (1A) substitute—
 - “(1A) In paragraph (1)—
 - (a) in sub-paragraph (ll) “public servant” means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that sub-paragraph by the Department by order;
 - (b) in sub-paragraph (m) “overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.”.
- (4) In paragraph (1B) (disclosure to designated public authorities) for “designated for the purposes of this Article” substitute “designated for the purposes of this paragraph”.
- (5) In paragraph (2), for the second sentence substitute—

“Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.”.
- (6) For paragraph (3) substitute—
 - “(3) For the purposes of this Article each of the following is a competent authority—
 - (a) the Department,
 - (b) an inspector appointed under this Part or Article 16A of the Insider Dealing Order or section 94 of the Financial Services Act 1986,
 - (c) any person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, Article 440 of this Order, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989,
 - (d) the Secretary of State,
 - (e) the Treasury,
 - (f) the Bank of England,
 - (g) the Lord Advocate,
 - (h) the Director of Public Prosecutions for Northern Ireland and the Director of Public Prosecutions in England and Wales,

- (i) any designated agency or transferee body within the meaning of the Financial Services Act 1986, and any body administering a scheme under section 54 of or paragraph 18 of Schedule 11 to that Act (schemes for compensation of investors),
- (j) the Registrar of Friendly Societies and the Chief Registrar of friendly societies in Great Britain,
- (k) the Industrial Assurance Commissioner for Northern Ireland and the Industrial Assurance Commissioner in Great Britain,
- (l) any constable,
- (m) any procurator fiscal.

(3A) Any information which may by virtue of this Article be disclosed to a competent authority may be disclosed to any officer or servant of the authority.”

(7) In paragraph (4) (orders) for “paragraph (1B)” substitute “paragraph (1A)(a) or (1B)”.

Punishment for destroying, mutilating, &c. company documents

14.—(1) Article 443 of the Companies Order (punishment for destroying, mutilating, &c. company documents) is amended as follows.

(2) In paragraph (1) for the opening words down to “insurance company” substitute “An officer of a company, or of an insurance company”, for “body's” substitute “company's” and for “the body” substitute “the company”.

(3) For paragraph (4) substitute—

“(4) Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to an offence under this Article.”.

(4) After that paragraph insert—

“(5) In this Article “document” includes information recorded in any form.”.

Punishment for furnishing false information

15. In Article 444 of the Companies Order (punishment for furnishing false information), for the second sentence substitute—

“Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.”.

Disclosure of information by Department or inspector

16. For Article 444A of the Companies Order (disclosure of information by the Department) substitute—

“Disclosure of information by Department or inspector

444A.—(1) This Article applies to information obtained under Articles 427 to 439.

(2) The Department may, if it thinks fit—

- (a) disclose any information to which this Article applies to any person to whom, or for any purpose for which, disclosure is permitted under Article 442, or
- (b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.

(3) Information to which this Article applies may also be disclosed by an inspector appointed under this Part to—

- (a) another inspector appointed under this Part or an inspector appointed under Article 16A of the Insider Dealing Order or section 94 of the Financial Services Act 1986, or
- (b) a person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, Article 440 of this Order, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989.

(4) Any information which may by virtue of paragraph (3) be disclosed to any person may be disclosed to any officer or servant of that person.

(5) The Department may, if it thinks fit, disclose any information obtained under Article 437 to—

- (a) the company whose ownership was the subject of the investigation,
- (b) any member of the company,
- (c) any person whose conduct was investigated in the course of the investigation,
- (d) the auditors of the company, or
- (e) any person whose financial interests appear to the Department to be affected by matters covered by the investigation.”.

Protection of banking information

17.—(1) Article 445 of the Companies Order (privileged information) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (b) (disclosure by bankers of information relating to their customers).

(3) After that paragraph insert—

“(1A) Nothing in Article 427, 436 or 439 requires a person (except as mentioned in paragraph (1B)) to disclose information or produce documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed is the company or other body corporate under investigation,
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (c) the making of the requirement is authorised by the Department.

(1B) Paragraph (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under Article 424, 425 or 426.”.

(4) In paragraph (3) after “officer of the Department” insert “or other person”.

Investigation of bodies incorporated outside Northern Ireland

18. For Article 446 of the Companies Order (investigation of bodies incorporated outside Northern Ireland) substitute—

“Investigation of bodies incorporated outside Northern Ireland

446.—(1) The provisions of this Part apply to bodies corporate incorporated outside Northern Ireland which are carrying on business in Northern Ireland, or have at any time carried on business there, as they apply to companies under this Order; but subject to the following exceptions, adaptations and modifications.

- (2) The following provisions do not apply to such bodies—
- (a) Article 424 (investigation on application of company or its members),
 - (b) Article 431 (power to bring civil proceedings on the company’s behalf),
 - (c) Articles 435 to 438 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and
 - (d) Article 439 (investigation of share dealings).
- (3) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be prescribed.”.

Investigation of unregistered companies

19. In Schedule 21 to the Companies Order (provisions applying to unregistered companies), for the entry relating to Part XV substitute—

“Part XV (except Article 439) Investigation of companies —”.
and their affairs; requisition of
documents.

Offences committed by bodies corporate or unincorporated bodies

20.—(1) After Article 680 of the Companies Order insert the following Articles—

“Offences by bodies corporate

680A.—(1) For the purposes of offences under any of Articles 218, 224(3), 401B(1) or 440 to 444, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(2) In paragraph (1) and in section 20(2) of the Interpretation Act (Northern Ireland) 1954 as it applies by virtue of paragraph (1) “director” includes a shadow director.

Criminal proceedings against unincorporated bodies

680B.—(1) Proceedings for an offence alleged to have been committed under any of Articles 397A(3), 401B(1) or 440 to 444 by an unincorporated body shall be brought in the name of that body (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 if that body were a corporation.

(2) A fine imposed on an unincorporated body on its conviction of such an offence shall be paid out of the funds of that body.

(3) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Article 166 of and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated body is charged with such an offence as they apply in the case of a corporation.

(4) Where such an offence 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.

(5) Where such an offence committed by an unincorporated body (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 body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.”

(2) In Article 218(6) of the Companies Order for “applies” substitute “and Article 680A (liability of individual for corporate default) apply”.

(3) In Article 224(3) of the Companies Order at the end add—

“Article 680A (liability of individual for corporate default) applies to offences under this paragraph.”

Amendments of the Insider Dealing Order

Investigations into insider dealing

21.—(1) Article 16A of the Insider Dealing Order (investigations into insider dealing) is amended as follows.

(2) After paragraph (2) (power to limit period or scope of investigation) insert—

“(2A) At any time during the investigation the Department may vary the appointment by limiting or extending the period during which the inspector is to continue his investigation or by confining the investigation to particular matters.”

(3) After paragraph (5) (duty of inspectors to report) insert—

“(5A) If the Department thinks fit, it may direct the inspector to take no further steps in the investigation or to take only such further steps as are specified in the direction; and where an investigation is the subject of such a direction, the inspectors shall make a final report to the Department only where the Department directs them to do so.”

(4) For paragraph (8) (privilege on grounds of banker’s duty of confidentiality) substitute—

“(8) A person shall not under this Article be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(b) the making of the requirement was authorised by the Department.”

(5) In paragraph (10) (definition of “documents”) for “references to its production include references to producing” substitute “the power to require its production includes power to require the production of”.

(6) After paragraph (10) insert—

“(10A) A person who is convicted on a prosecution instituted as a result of an investigation under this Article may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Department may determine in respect of general staff costs and overheads.”

Restrictions on disclosure of information

22. In Article 16B(3) of the Insider Dealing Order (persons who are “primary recipients” for purposes of provisions restricting disclosure of information)—

- (a) omit the word “and” preceding sub-paragraph (c);
- (b) after sub-paragraph (c) insert—
 - “(d) any constable or other person named in a warrant issued under this Order.”.

Entry and search of premises

23.—(1) Article 16D of the Insider Dealing Order (powers of entry) is amended as follows.

(2) After paragraph (1) insert—

“(1A) A justice of the peace may also issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department, or by a person appointed or authorised to exercise powers under Article 16A, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under Article 16A and which have not been produced in compliance with the requirement.”.

(3) In paragraph (2)(b) after “paragraph (1)” insert “or, as the case may be, paragraph (1A)”.

(4) In paragraph (4) (period for which documents may be retained), for sub-paragraph (b) substitute—

“(b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.”.

(5) In paragraph (5) (definition of “documents”), omit the words from “and, in relation” to the end.

(6) In Article 17(1C) of that Order (offence of obstructing exercise of rights conferred by warrant under Article 16D) after “Any person who” insert “intentionally”.

Amendments of other statutory provisions

Amendment of the Building Societies Act 1986

24. In section 53 of the Building Societies Act 1986⁽⁵⁾ (confidentiality of information obtained by the Building Societies Commission), in subsection (7)(c) (functions of Department for purposes of which disclosure may be made) at the end add “, Part III of the Companies (Northern Ireland) Order 1990 or Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990;”.

Amendments of the Banking Act 1987

25.—(1) In section 84(1) of the Banking Act 1987⁽⁶⁾ (disclosure of information obtained under that Act), the Table showing the authorities to which, and functions for the purposes of which, disclosure may be made is amended as follows.

(2) In the entry relating to the Department of Economic Development in Northern Ireland, in column 2 at the end add “or Part III of the Companies (Northern Ireland) Order 1990 or Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990”.

(3) For the entry relating to inspectors appointed by the Department substitute—

“An inspector appointed under Part XV of the Companies (Northern Ireland) Order 1986 or under Article 16A of the Companies Securities (Insider Dealing) (Northern Ireland) Order 1986.

Functions under that Part or that Article.

(5) 1986 c. 53

(6) 1987 c. 22

A person authorised to exercise powers under Article 440 of the Companies (Northern Ireland) Order 1986 or section 84 of the Companies Act 1989. Functions under that Article or section.”.

Amendment of the Companies (Northern Ireland) Order 1989

26. In Article 11(1) of the Companies (Northern Ireland) Order 1989(7) (disqualification after investigation of company), after “Article 440 or 441 of the Companies Order” insert “or section 83 of the Companies Act 1989”.

Amendment of the Insolvency (Northern Ireland) Order 1989

27. In Article 182(4) of the Insolvency (Northern Ireland) Order 1989(8) (investigation by Department on report by liquidator), for sub-paragraph (a) substitute—

“(a) shall thereupon investigate the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, and”.

PART III

REGISTRATION OF COMPANY CHARGES

Introduction

Introduction

28. The provisions of this Part amend the provisions of the Companies Order relating to the registration of company charges—

- (a) by inserting in Part XIII of that Order (in place of Articles 402 to 416) new provisions with respect to companies registered in Northern Ireland, and
- (b) by inserting as Chapter III of Part XXIII of that Order (in place of Article 417) new provisions with respect to companies incorporated outside Northern Ireland.

Registration in the companies charges register

Charges requiring registration

29. The following Articles are inserted in Part XIII of the Companies Order—

“Registration in the company charges register

Introductory provisions

402.—(1) The purpose of this Part is to secure the registration of charges on a company’s property.

(2) In this Part—

(7) 1989 NI 18

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“charge” means any form of security interest (fixed or floating) over property, other than an interest arising by operation of law; and

“property”, in the context of what is the subject of a charge, includes future property.

(3) It is immaterial for the purposes of this Part where the property subject to a charge is situated.

(4) References in this Part to registration, in relation to a charge, are to registration in the register kept by the registrar under this Part.

Charges requiring registration

403.—(1) The charges requiring registration under this Part are—

- (a) a charge on land or any interest in land, other than a charge for rent or any other periodical sum issuing out of the land;
- (b) a charge on goods or any interest in goods, other than a charge under which the chargee is entitled to possession either of the goods or of a document of title to them;
- (c) a charge on intangible movable property of any of the following descriptions—
 - (i) goodwill,
 - (ii) intellectual property,
 - (iii) book debts (whether book debts of the company or assigned to the company),
 - (iv) uncalled share capital of the company or calls made but not paid;
- (d) a charge for securing an issue of debentures; or
- (e) a floating charge on the whole or part of the company’s property.

(2) The descriptions of charge mentioned in paragraph (1) shall be construed as follows—

- (a) a charge on a debenture forming part of an issue or series shall not be treated as falling within sub-paragraph (a) or (b) by reason of the fact that the debenture is secured by a charge on land or goods (or on an interest in land or goods);
- (b) in sub-paragraph (b) “goods” means any tangible movable property other than money;
- (c) a charge is not excluded from sub-paragraph (b) because the chargee is entitled to take possession in case of default or on the occurrence of some other event;
- (d) in sub-paragraph (c)(ii) “intellectual property” means—
 - (i) any patent, trade mark, service mark, registered design, copyright or design right, or
 - (ii) any licence under or in respect of any such right;
- (e) a debenture which is part of an issue or series shall not be treated as a book debt for the purposes of sub-paragraph (c)(iii);
- (f) the deposit by way of security of a negotiable instrument given to secure the payment of book debts shall not be treated for the purposes of sub-paragraph (c)(iii) as a charge on book debts;
- (g) a shipowner’s lien on subfreights shall not be treated as a charge on book debts for the purposes of sub-paragraph (c)(iii) or as a floating charge for the purposes of sub-paragraph (e).

- (3) Whether a charge is one requiring registration under this Part shall be determined—
- (a) in the case of a charge created by a company, as at the date the charge is created, and
 - (b) in the case of a charge over property acquired by a company, as at the date of the acquisition.

(4) The Department may by regulations amend paragraphs (1) and (2) so as to add any description of charge to, or remove any description of charge from, the charges requiring registration under this Part.

(5) In the following provisions of this Part references to a charge are to a charge requiring registration under this Part.

Where a charge not otherwise requiring registration relates to property by virtue of which it requires to be registered and to other property, the references are to the charge so far as it relates to property of the former description.”.

The companies charges register

30. The following Article is inserted in Part XIII of the Companies Order—

“The companies charges register

404.—(1) The registrar shall keep for each company a register, in such form as he thinks fit, of charges on property of the company.

(2) The register shall consist of a file containing with respect to each charge the particulars and other information delivered to the registrar under the provisions of this Part.

(3) Any person may require the registrar to provide a certificate stating the date on which any specified particulars of, or other information relating to, a charge were delivered to him.

(4) The certificate shall be signed by the registrar or authenticated by his official seal.

(5) The certificate shall be conclusive evidence that the specified particulars or other information were delivered to the registrar no later than the date stated in the certificate; and it shall be presumed unless the contrary is proved that they were not delivered earlier than that date.”.

Delivery of particulars for registration

31. The following Articles are inserted in Part XIII of the Companies Order—

“Company’s duty to deliver particulars of charge for registration

405.—(1) It is the duty of a company which creates a charge, or acquires property subject to a charge—

- (a) to deliver the prescribed particulars of the charge, in the prescribed form, to the registrar for registration, and
- (b) to do so within 21 days after the date of the charge’s creation or, as the case may be, the date of the acquisition;

but particulars of a charge may be delivered for registration by any person interested in the charge.

(2) Where the particulars are delivered for registration by a person other than the company concerned, that person is entitled to recover from the company the amount of any fees paid by him to the registrar in connection with the registration.

(3) If a company fails to comply with paragraph (1), then, unless particulars of the charge have been delivered for registration by another person, the company and every officer of it who is in default is liable to a fine.

(4) Where prescribed particulars in the prescribed form are delivered to the registrar for registration, he shall file the particulars in the register and shall note, in such form as he thinks fit, the date on which they were delivered to him.

(5) The registrar shall send to the company and any person appearing from the particulars to be the chargee, and if the particulars were delivered by another person interested in the charge to that person, a copy of the particulars filed by him and of the note made by him as to the date on which they were delivered.

Effect of failure to deliver particulars for registration

406.—(1) Where a charge is created by a company and no prescribed particulars in the prescribed form, are delivered for registration within the period of 21 days after the date of the charge’s creation, the charge is void against—

- (a) an administrator or liquidator of the company, and
- (b) any person who for value acquires an interest in or right over property subject to the charge,

where the relevant event occurs after the creation of the charge, whether before or after the end of the 21 day period.

This is subject to Article 407 (late delivery of particulars).

(2) In this Part “the relevant event” means—

- (a) in relation to the voidness of a charge as against an administrator or liquidator, the beginning of the insolvency proceedings, and
- (b) in relation to the voidness of a charge as against a person acquiring an interest in or right over property subject to a charge, the acquisition of that interest or right;

and references to “a relevant event” shall be construed accordingly.

(3) Where a relevant event occurs on the same day as the charge is created, it shall be presumed to have occurred after the charge is created unless the contrary is proved.

Late delivery of particulars

407.—(1) Where prescribed particulars of a charge created by a company, in the prescribed form, are delivered for registration more than 21 days after the date of the charge’s creation, Article 406(1) does not apply in relation to relevant events occurring after the particulars are delivered.

(2) However, where in such a case—

- (a) the company is at the date of delivery of the particulars unable to pay its debts, or subsequently becomes unable to pay its debts in consequence of the transaction under which the charge is created, and
- (b) insolvency proceedings begin before the end of the relevant period beginning with the date of delivery of the particulars,

the charge is void as against the administrator or liquidator.

(3) For this purpose—

- (a) the company is “unable to pay its debts” in the circumstances specified in Article 103 of the Insolvency Order, and

(b) the “relevant period” is—

- (i) two years in the case of a floating charge created in favour of a person connected with the company (within the meaning of Article 7 of that Order),
- (ii) one year in the case of a floating charge created in favour of a person not so connected, and
- (iii) six months in any other case.

(4) Where a relevant event occurs on the same day as the particulars are delivered, it shall be presumed to have occurred before the particulars are delivered unless the contrary is proved.”.

Delivery of further particulars

32. The following Article is inserted in Part XIII of the Companies Order—

“Delivery of further particulars

408.—(1) Further particulars of a charge, supplementing or varying the registered particulars, may be delivered to the registrar for registration at any time.

(2) Further particulars must be in the prescribed form signed by or on behalf of both the company and the chargee.

(3) Where further particulars are delivered to the registrar for registration and appear to him to be duly signed, he shall file the particulars in the register and shall note, in such form as he thinks fit, the date on which they were delivered to him.

(4) The registrar shall send to the company and any person appearing from the particulars to be the chargee, and if the particulars were delivered by another person interested in the charge to that other person, a copy of the further particulars filed by him and of the note made by him as to the date on which they were delivered.”.

Effect of omissions and errors in registered particulars

33. The following Article is inserted in Part XIII of the Companies Order—

“Effect of omissions and errors in registered particulars

409.—(1) Where the registered particulars of a charge created by a company are not complete and accurate, the charge is void, as mentioned below, to the extent that rights are not disclosed by the registered particulars which would be disclosed if they were complete and accurate.

(2) The charge is void to that extent, unless the court on the application of the chargee orders otherwise, as against—

- (a) an administrator or liquidator of the company, and
- (b) any person who for value acquires an interest in or right over property subject to the charge,

where the relevant event occurs at a time when the particulars are incomplete or inaccurate in a relevant respect.

(3) Where a relevant event occurs on the same day as particulars or further particulars are delivered, it shall be presumed to have occurred before those particulars are delivered unless the contrary is proved.

(4) The court may order that the charge is effective as against an administrator or liquidator of the company if it is satisfied—

- (a) that the omission or error is not likely to have misled materially to his prejudice any unsecured creditor of the company, or
- (b) that no person became an unsecured creditor of the company at a time when the registered particulars of the charge were incomplete or inaccurate in a relevant respect.

(5) The court may order that the charge is effective as against a person acquiring an interest in or right over property subject to the charge if it is satisfied that he did not rely, in connection with the acquisition, on registered particulars which were incomplete or inaccurate in a relevant respect.

(6) For the purposes of this Article an omission or inaccuracy with respect to the name of the chargee shall not be regarded as a failure to disclose the rights of the chargee.”.

Memorandum of charge ceasing to affect company’s property

34. The following Article is inserted in Part XIII of the Companies Order—

“Memorandum of charge ceasing to affect company’s property

410.—(1) Where a charge of which particulars have been delivered ceases to affect the company’s property, a memorandum to that effect may be delivered to the registrar for registration.

(2) The memorandum must be in the prescribed form signed by or on behalf of both the company and the chargee.

(3) Where a memorandum is delivered to the registrar for registration and appears to him to be duly signed, he shall file it in the register, and shall note, in such form as he thinks fit, the date on which it was delivered to him.

(4) The registrar shall send to the company and any person appearing from the memorandum to be the chargee, and if the memorandum was delivered by another person interested in the charge to that person, a copy of the memorandum filed by him and of the note made by him as to the date on which it was delivered.

(5) If a duly signed memorandum is delivered in a case where the charge in fact continues to affect the company’s property, the charge is void as against—

- (a) an administrator or liquidator of the company, and
- (b) any person who for value acquires an interest in or right over property subject to the charge,

where the relevant event occurs after the delivery of the memorandum.

(6) Where a relevant event occurs on the same day as the memorandum is delivered, it shall be presumed to have occurred before the memorandum is delivered unless the contrary is proved.”.

Further provisions with respect to voidness of charges

35. The following Articles are inserted in Part XIII of the Companies Order—

“Further provisions with respect to voidness of charges

Exclusion of voidness as against unregistered charges

411.—(1) A charge is not void by virtue of this Part as against a subsequent charge unless some or all of the relevant particulars of that charge are duly delivered for registration—

- (a) within 21 days after the date of its creation, or
- (b) before complete and accurate relevant particulars of the earlier charge are duly delivered for registration.

(2) Where relevant particulars of the subsequent charge so delivered are incomplete or inaccurate, the earlier charge is void as against that charge only to the extent that rights are disclosed by registered particulars of the subsequent charge duly delivered for registration before the corresponding relevant particulars of the earlier charge.

(3) The relevant particulars of a charge for the purposes of this Article are those prescribed particulars relating to rights inconsistent with those conferred by or in relation to the other charge.

Restrictions on voidness by virtue of this Part

412.—(1) A charge is not void by virtue of this Part as against a person acquiring an interest in or right over property where the acquisition is expressly subject to the charge.

(2) Nor is a charge void by virtue of this Part in relation to any property by reason of a relevant event occurring after the company which created the charge has disposed of the whole of its interest in that property.

Effect of exercise of power of sale

413.—(1) A chargee exercising a power of sale may dispose of property to a purchaser freed from any interest or right arising from the charge having become void to any extent by virtue of this Part—

- (a) against an administrator or liquidator of the company, or
- (b) against a person acquiring a security interest over property subject to the charge; and a purchaser is not concerned to see or inquire whether the charge has become so void.

(2) The proceeds of the sale shall be held by the chargee in trust to be applied—

First, in discharge of any sum effectively secured by prior incumbrances to which the sale is not made subject;

Second, in payment of all costs, charges and expenses properly incurred by him in connection with the sale, or any previous attempted sale, of the property;

Third, in discharge of any sum effectively secured by the charge and incumbrances ranking *pari passu* with the charge;

Fourth, in discharge of any sum effectively secured by incumbrances ranking after the charge;

and any residue is payable to the company or to a person authorised to give a receipt for the proceeds of the sale of the property.

(3) For the purposes of paragraph (2)—

- (a) prior incumbrances include any incumbrance to the extent that the charge is void as against it by virtue of this Part; and

- (b) no sum is effectively secured by a charge to the extent that it is void as against an administrator or liquidator of the company.
- (4) In this Article—
 - (a) references to things done by a chargee include things done by a receiver appointed by him, whether or not the receiver acts as his agent;
 - (b) “power of sale” includes any power to dispose of, or grant an interest out of, property for the purpose of enforcing a charge, and references to “sale” shall be construed accordingly; and
 - (c) “purchaser” means a person who in good faith and for valuable consideration acquires an interest in property.
- (5) The provisions of this Article as to the order of application of the proceeds of sale have effect subject to any other statutory provision applicable in any case.
- (6) Where a chargee exercising a power of sale purports to dispose of property freed from any such interest or right as is mentioned in paragraph (1) to a person other than a purchaser, the above provisions apply, with any necessary modifications, in relation to a disposition to a purchaser by that person or any successor in title of his.

Effect of voidness on obligation secured

- 414.**—(1) Where a charge becomes void to any extent by virtue of this Part, the whole of the sum secured by the charge is payable forthwith on demand; and this applies notwithstanding that the sum secured by the charge is also the subject of other security.
- (2) Where the charge is to secure the repayment of money, the references in paragraph (1) to the sum secured include any interest payable.”.

Additional information to be registered

- 36.** The following Articles are inserted in Part XIII of the Companies Order—

“Additional information to be registered

Particulars of taking up of issue of debentures

- 415.**—(1) Where particulars of a charge for securing an issue of debentures have been delivered for registration, it is the duty of the company—
- (a) to deliver to the registrar for registration particulars in the prescribed form of the date on which any debentures of the issue are taken up, and of the amount taken up, and
 - (b) to do so before the end of the period of 21 days after the date on which they are taken up.
- (2) Where particulars in the prescribed form are delivered to the registrar for registration under this Article, he shall file them in the register.
- (3) If a company fails to comply with paragraph (1), the company and every officer of it who is in default is liable to a fine.

Notice of appointment of receiver or manager, &c.

- 416.**—(1) If a person obtains an order for the appointment of a receiver or manager of a company’s property, or appoints such a receiver or manager under powers contained in

an instrument, he shall within seven days of the order or of the appointment under those powers, give notice of that fact, in the prescribed form, to the registrar for registration.

(2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give notice of that fact in the prescribed form to the registrar for registration.

(3) Where a notice under this Article in the prescribed form is delivered to the registrar for registration, he shall file it in the register.

(4) If a person makes default in complying with the requirements of paragraph (1) or (2), he is liable to a fine.

Notice of crystallisation of floating charge, &c.

417.—(1) The Department may by regulations require notice in the prescribed form to be given to the registrar of—

- (a) the occurrence of such events as may be prescribed affecting the nature of the security under a floating charge of which particulars have been delivered for registration, and
- (b) the taking of such action in exercise of powers conferred by a fixed or floating charge of which particulars have been delivered for registration, or conferred in relation to such a charge by an order of the court, as may be prescribed.

(2) The regulations may make provision as to—

- (a) the persons by whom notice is required to be, or may be, given, and the period within which notice is required to be given;
- (b) the filing in the register of the particulars contained in the notice and the noting of the date on which the notice was given; and
- (c) the consequences of failure to give notice.

(3) As regards the consequences of failure to give notice of an event causing a floating charge to crystallise, the regulations may include provision to the effect that the crystallisation—

- (a) shall be treated as ineffective until the prescribed particulars are delivered, and
- (b) if the prescribed particulars are delivered after the expiry of the prescribed period, shall continue to be ineffective against such persons as may be prescribed,

subject to the exercise of such powers as may be conferred by the regulations on the court.

(4) The regulations may provide that if there is a failure to comply with such of the requirements of the regulations as may be prescribed, such persons as may be prescribed are liable to a fine.”.

Copies of instruments and register to be kept by company

Copies of instruments and register to be kept by company

37. The following Articles are inserted in Part XIII of the Companies Order—

*“Copies of instruments and register to be kept by company***Duty to keep copies of instruments and register**

417A.—(1) Every company shall keep at its registered office a copy of every instrument creating or evidencing a charge over the company’s property. In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

(2) Every company shall also keep at its registered office a register of all such charges, containing entries for each charge giving a short description of the property charged, the amount of the charge and (except in the case of securities to bearer) the names of the persons entitled to it.

(3) This Article applies to any charge, whether or not particulars are required to be delivered to the registrar for registration.

(4) If a company fails to comply with any requirement of this Article, the company and every officer of it who is in default is liable to a fine.

Inspection of copies and register

417B.—(1) The copies and the register referred to in Article 417A shall be open to the inspection of any creditor or member of the company without fee; and to the inspection of any other person on payment of such fee as may be prescribed.

(2) Any person may request the company to provide him with a copy of—

- (a) any instrument creating or evidencing a charge over the company’s property, or
- (b) any entry in the register of charges kept by the company,

on payment of such fee as may be prescribed.

This paragraph applies to any charge, whether or not particulars are required to be delivered to the registrar for registration.

(3) The company shall send the copy to him not later than ten days after the day on which the request is received or, if later, on which payment is received.

(4) If inspection of the copies or register is refused, or a copy requested is not sent within the time specified above—

- (a) the company and every officer of it who is in default is liable to a fine, and
- (b) the court may by order compel an immediate inspection of the copies or register or, as the case may be, direct that the copy be sent immediately.”.

*Supplementary provisions***Power to make further provision by regulations**

38. The following Article is inserted in Part XIII of the Companies Order—

*“Supplementary provisions***Power to make further provision by regulations**

417C.—(1) The Department may by regulations make further provision as to the application of the provisions of this Part in relation to charges of any description specified in the regulations.

Nothing in the following provisions shall be construed as restricting the generality of that power.

(2) The regulations may require that where the charge is contained in or evidenced or varied by a written instrument there shall be delivered to the registrar for registration, instead of particulars or further particulars of the charge, the instrument itself or a certified copy of it together with such particulars as may be prescribed.

(3) The regulations may provide that a memorandum of a charge ceasing to affect property of the company shall not be accepted by the registrar unless supported by such evidence as may be prescribed, and that a memorandum not so supported shall be treated as not having been delivered.

(4) The regulations may also provide that where the instrument creating the charge is delivered to the registrar in support of such a memorandum, the registrar may mark the instrument as cancelled before returning it and shall send copies of the instrument cancelled to such persons as may be prescribed.

(5) The regulations may exclude or modify, in such circumstances and to such extent as may be prescribed, the operation of the provisions of this Part relating to the voidness of a charge.

(6) The regulations may require, in connection with the delivery of particulars, further particulars or a memorandum of the charge's ceasing to affect property of the company, the delivery of such supplementary information as may be prescribed, and may—

- (a) apply in relation to such supplementary information any provisions of this Part relating to particulars, further particulars or such a memorandum, and
- (b) provide that the particulars, further particulars or memorandum shall be treated as not having been delivered until the required supplementary information is delivered.”.

Other supplementary provisions

39. The following Articles are inserted in Part XIII of the Companies Order—

“Date of creation of charge

417D.—(1) References in this Part to the date of creation of a charge by a company shall be construed as follows.

(2) A charge shall be taken to be created—

- (a) in the case of a charge created by an instrument in writing, when the instrument is executed by the company or, if its execution by the company is conditional, upon the conditions being fulfilled, and
- (b) in any other case, when an enforceable agreement is entered into by the company conferring a security interest intended to take effect forthwith or upon the company acquiring an interest in property subject to the charge.

(3) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, any further proceedings necessary to make the charge valid or effectual under the law of the country where the property is situated shall be disregarded in ascertaining the date on which the charge is to be taken to be created.

Prescribed particulars and related expressions

417E.—(1) References in this Part to the prescribed particulars of a charge are to such particulars of, or relating to, the charge as may be prescribed.

(2) The prescribed particulars may, without prejudice to the generality of paragraph (1), include—

- (a) whether the company has undertaken not to create other charges ranking in priority to or *pari passu* with the charge, and
- (b) whether the charge is a market charge within the meaning of Part V of the Companies (No. 2) (Northern Ireland) Order 1990 or a charge to which the provisions of that Part apply as they apply to a market charge.

(3) References in this Part to the registered particulars of a charge at any time are to such particulars and further particulars of the charge as have at that time been duly delivered for registration.

(4) References in this Part to the registered particulars of a charge being complete and accurate at any time are to their including all the prescribed particulars which would be required to be delivered if the charge were then newly created.

Notice of matters disclosed on register

417F.—(1) A person taking a charge over a company's property shall be taken to have notice of any matter requiring registration and disclosed on the register at the time the charge is created.

(2) Otherwise, a person shall not be taken to have notice of any matter by reason of its being disclosed on the register or by reason of his having failed to search the register in the course of making such inquiries as ought reasonably to be made.

(3) The above provisions have effect subject to any other statutory provision as to whether a person is to be taken to have notice of any matter disclosed on the register.

Power of court to dispense with signature

417G.—(1) Where it is proposed to deliver further particulars of a charge, or to deliver a memorandum of a charge ceasing to affect the company's property, and—

- (a) the chargee refuses to sign or authorise a person to sign on his behalf, or cannot be found, or
- (b) the company refuses to authorise a person to sign on its behalf,

the court may on the application of the company or the chargee, or of any other person having a sufficient interest in the matter, authorise the delivery of the particulars or memorandum without that signature.

(2) The order may be made on such terms as appear to the court to be appropriate.

(3) Where particulars or a memorandum are delivered to the registrar for registration in reliance on an order under this Article, they must be accompanied by an office copy of the order.

In such a case the references in Articles 408 and 410 to the particulars or memorandum being duly signed are to their being otherwise duly signed.

(4) The registrar shall file the office copy of the court order along with the particulars or memorandum.”.

Interpretation, &c.

40. The following Articles are inserted in Part XIII of the Companies Order—

“Regulations

417H. Regulations under any provision of this Part, or prescribing anything for the purposes of any such provision, may contain such transitional provisions as appear to the Department to be appropriate.

Minor definitions

417I.—(1) In this Part—

“chargee” means the person for the time being entitled to exercise the security rights conferred by the charge;

“issue of debentures” means a group of debentures, or an amount of debenture stock, secured by the same charge; and

“series of debentures” means a group of debentures each containing or giving by reference to another instrument a charge to the benefit of which the holders of debentures of the series are entitled *pari passu*.

(2) References in this Part to the creation of a charge include the variation of a charge which is not registrable so as to include property by virtue of which it becomes registrable. The provisions of Article 417D (construction of references to date of creation of charge) apply in such a case with any necessary modifications.

(3) References in this Part to the date of acquisition of property by a company are to the date on which the acquisition is completed.

(4) References in this Part to the beginning of insolvency proceedings are to—

(a) the presentation of a petition on which an administration order or winding-up order is made, or

(b) the passing of a resolution for voluntary winding up.

Index of defined expressions

417J. The following Table shows the provisions of this Part defining or otherwise explaining expressions used in this Part (other than expressions used only in the same Article)—

charge	Articles 402(2) and 403(5)
charge requiring registration	Article 403
chargee	Article 417I(1)
complete and accurate (in relation to registered particulars)	Article 417E(4)
creation of charge	Article 417I(2)
date of acquisition (of property by a company)	Article 417I(3)
date of creation of charge	Article 417D
further particulars	Article 408
insolvency proceedings, beginning of	Article 417I(4)
issue of debentures	Article 417I(1)

memorandum of charge ceasing to affect company's property	Article 410
prescribed particulars	Article 417E(1) and (2)
property	Article 402(2)
registered particulars	Article 417E(3)
registration in relation to a charge	Article 402(4)
relevant event	Article 406(2)
series of debentures	Article 417I(1)."

Charges on property of company incorporated outside Northern Ireland

41. The provisions set out in Schedule 1 are inserted in Part XXIII of the Companies Order (companies incorporated outside Northern Ireland) as a Chapter III (registration of charges).

Application of provisions to unregistered companies

42. In Schedule 21 to the Companies Order (provisions applying to unregistered companies), at the appropriate place insert—

“Part XIII	Registration of company charges; copies of instruments and register to be kept by company.	Subject to Article 667(3).”.
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Consequential amendments

43. The statutory provisions specified in Schedule 2 have effect with the amendments specified there, which are consequential on the amendments made by the preceding provisions of this Part.

PART IV

OTHER AMENDMENTS OF COMPANY LAW

A company's capacity and related matters

A company's capacity and the power of the directors to bind it

44.—(1) In Chapter III of Part II of the Companies Order (a company's capacity; formalities of carrying on business), for Article 45 substitute—

“A company's capacity not limited by its memorandum

45.—(1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.

(2) A member of a company may bring proceedings to restrain the doing of an act which but for paragraph (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for paragraph (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

(4) The operation of this Article is restricted by Article 9A of the Charities (Northern Ireland) Order 1987 in relation to companies which are charities; and Article 330A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this Article.

Power of directors to bind the company

45A.—(1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitation under the company's constitution.

(2) For this purpose—

- (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party;
- (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and
- (c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—

- (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
- (b) from any agreement between the members of the company or of any class of shareholders.

(4) Paragraph (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(5) Nor does that paragraph affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.

(6) The operation of this Article is restricted by Article 9A of the Charities (Northern Ireland) Order 1987 in relation to companies which are charities; and Article 330A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this Article.

No duty to enquire as to capacity of company or authority of directors

45B. A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.”

(2) In Schedule 20 to the Companies Order (effect of registration of companies not formed under that Order), in paragraph 6 (general application of provisions of Order), after sub-paragraph (5) insert—

“(6) Where by virtue of sub-paragraph (4) or (5) a company does not have power to alter a provision, it does not have power to ratify acts of the directors in contravention of the provision.”.

(3) In Schedule 21 to the Companies Order (provisions applying to unregistered companies), in the entries relating to Part II, in the first column for “Article 45” substitute “Articles 45 to 45B”.

Invalidity of certain transactions involving directors

45.—(1) In Part XI of the Companies Order (enforcement of fair dealing by directors), after Article 330 insert—

“Invalidity of certain transactions involving directors, etc.

330A.—(1) This Article applies where a company enters into a transaction to which the parties include—

- (a) a director of the company or of its holding company, or
- (b) a person connected with such a director or a company with whom such a director is associated,

and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company’s constitution.

(2) The transaction is voidable at the instance of the company.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in paragraph (1)(a) or (b), and any director of the company who authorised the transaction, is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the transaction, and
- (b) to indemnify the company for any loss or damage resulting from the transaction.

(4) Nothing in the above provisions shall be construed as excluding the operation of any other statutory provision or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

(5) The transaction ceases to be voidable if—

- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
- (b) the company is indemnified for any loss or damage resulting from the transaction, or
- (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
- (d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.

(6) A person other than a director of the company is not liable under paragraph (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(7) This Article does not affect the operation of Article 45A in relation to any party to the transaction not within paragraph (1)(a) or (b).

But where a transaction is voidable by virtue of this Article and valid by virtue of that Article in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

(8) In this Article “transaction” includes any act; and the reference in paragraph (1) to limitations under the company’s constitution includes limitations deriving—

- (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
- (b) from any agreement between the members of the company or of any class of shareholders.”.

(2) In Schedule 21 to the Companies Order (provisions applying to unregistered companies), in the entries relating to Part XI, insert—

“Article 330A.	Invalidity of certain transactions involving directors, etc.	Subject to Article 667(3).”.
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Statement of company’s objects

46.—(1) In Chapter I of Part II of the Companies Order (company formation), after Article 14 (forms of memorandum) insert—

“Statement of company’s objects: general commercial company

14A. Where the company’s memorandum states that the object of the company is to carry on business as a general commercial company—

- (a) the object of the company is to carry on any trade or business whatsoever, and
- (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.”.

(2) In the same Chapter, for Article 15 (resolution to alter objects) substitute—

“Resolution to alter objects

15.—(1) A company may by special resolution alter its memorandum with respect to the statement of the company’s objects.

(2) If an application is made under Article 16, an alteration does not have effect except in so far as it is confirmed by the court.”.

Charitable companies

47.—(1) In the Charities (Northern Ireland) Order 1987(9) for Article 9 (charitable companies) substitute—

“Charitable companies: alteration of objects clause

9.—(1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to 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 accrued before the alteration is made, or

(c) the income from any such property as aforesaid.

(2) Where a charity is a company, any alteration by it of the objects clause in its memorandum of association is ineffective without the prior written consent of the Department; and it shall deliver a copy of that consent to the registrar of companies under Article 17(1)(a) or (b) of the Companies Order along with the printed copy of the memorandum as altered.

(3) Article 17(3) of that Order (offences) applies in relation to a default in complying with paragraph (2) as regards the delivery of a copy of the Department's consent.

Charitable companies: invalidity of certain transactions

9A.—(1) Articles 45 and 45A of the Companies Order (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—

- (a) gives full consideration in money or money's worth in relation to the act in question, and
- (b) does not know that the act is not permitted by the company's memorandum or, as the case may be, is beyond the powers of the directors,

or who does not know at the time the act is done that the company is a charity.

(2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company's constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.

(3) In any proceedings arising out of paragraph (1) the burden of proving—

- (a) that a person knew that an act was not permitted by the company's memorandum or was beyond the powers of the directors, or
- (b) that a person knew that the company was a charity,

lies on the person making that allegation.

(4) Where a company is a charity, the ratification of an act under Article 45(3) of the Companies Order, or the ratification of a transaction to which Article 330A of that Order applies (invalidity of certain transactions to which directors or their associates are parties), is ineffective without the prior written consent of the Department.

Charitable companies: status to appear on correspondence, etc.

9B.—(1) Where a company is a charity and its name does not include the word "charity" or the word "charitable", the fact that the company is a charity shall be stated in English in legible characters—

- (a) in all business letters of the company,
- (b) in all its notices and other official publications,
- (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company,
- (d) in all conveyances purporting to be executed by the company, and
- (e) in all its bills of parcels, invoices, receipts and letters of credit.

(2) In paragraph (1)(d) "conveyance" means any instrument creating, transferring, varying or extinguishing an interest in land.

(3) Article 357(2) to (4) of the Companies Order (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of paragraph (1).”.

(2) In Article 2(2) of the Charities (Northern Ireland) Order 1987(10) (definitions), at the appropriate place insert—

““company” means a company formed and registered under the Companies Order, or to which the provisions of that Order apply as they apply to such a company;

“Companies Order” means the Companies (Northern Ireland) Order 1986;”.

De-regulation of private companies

Written resolutions of private companies

48.—(1) Chapter IV of Part XII of the Companies Order (meetings and resolutions) is amended as follows.

(2) After Article 389 insert—

“Written resolutions of private companies

Written resolutions of private companies

389A.—(1) Anything which in the case of a private company may be done—

- (a) by resolution of the company in general meeting, or
- (b) by resolution of a meeting of any class of members of the company,

may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting.

(2) The signatures need not be on a single document provided each is on a document which accurately states the terms of the resolution.

(3) The date of the resolution means when the resolution is signed by or on behalf of the last member to sign.

(4) A resolution agreed to in accordance with this Article has effect as if passed—

- (a) by the company in general meeting, or
- (b) by a meeting of the relevant class of members of the company,

as the case may be; and any reference in any statutory provision to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

(5) Any reference in any statutory provision to the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this Article, a reference to the date of the resolution, unless Article 389B(4) applies in which case it shall be construed as a reference to the date from which the resolution has effect.

(6) A resolution may be agreed to in accordance with this Article which would otherwise be required to be passed as a special, extraordinary or elective resolution; and any reference in any statutory provision to a special, extraordinary or elective resolution includes such a resolution.

(7) This Article has effect subject to the exceptions specified in Part I of Schedule 15A; and in relation to certain descriptions of resolution under this Article the procedural requirements of this Order have effect with the adaptations specified in Part II of that Schedule.

Rights of auditors in relation to written resolution

389B.—(1) A copy of any written resolution proposed to be agreed to in accordance with Article 389A shall be sent to the company’s auditors.

(2) If the resolution concerns the auditors as auditors, they may within seven days from the day on which they receive the copy give notice to the company stating their opinion that the resolution should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company.

(3) A written resolution shall not have effect unless—

(a) the auditors notify the company that in their opinion the resolution—

(i) does not concern them as auditors, or

(ii) does so concern them but need not be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company, or

(b) the period for giving a notice under paragraph (2) expires without any notice having been given in accordance with that paragraph.

(4) A written resolution previously agreed to in accordance with Article 389A shall not have effect until that notification is given or, as the case may be, that period expires.

Written resolutions: supplementary provisions

389C.—(1) Articles 389A and 389B have effect notwithstanding any provision of the company’s memorandum or articles.

(2) Nothing in those Articles affects any statutory provision or rule of law as to—

(a) things done otherwise than by passing a resolution, or

(b) cases in which a resolution is treated as having been passed, or a person is precluded from alleging that a resolution has not been duly passed.”.

(3) After Article 390 insert—

“Recording of written resolutions

390A.—(1) Where a written resolution is agreed to in accordance with Article 389A which has effect as if agreed by the company in general meeting, the company shall cause a record of the resolution (and of the signatures) to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

(2) Any such record, if purporting to be signed by a director of the company or by the company secretary, is evidence of the proceedings in agreeing to the resolution; and where a record is made in accordance with this Article, then, until the contrary is proved, the requirements of this Order with respect to those proceedings shall be deemed to be complied with.

(3) Article 390(5) (penalties) applies in relation to a failure to comply with paragraph (1) as it applies in relation to a failure to comply with paragraph (1) of that Article and Article 391 (inspection of minute books) applies in relation to a record made in accordance with this Article as it applies in relation to the minutes of a general meeting.”.

Written resolutions: supplementary provisions

49.—(1) In the Companies Order the following Schedule is inserted after Schedule 15—

“SCHEDULE 15A

WRITTEN RESOLUTIONS OF PRIVATE COMPANIES

PART I

EXCEPTIONS

1. Article 389A does not apply to—
 - (a) a resolution under Article 311 removing a director before the expiration of his period of office, or
 - (b) a resolution under Article 339 removing an auditor before the expiration of his term of office.

PART II

ADAPTATION OF PROCEDURAL REQUIREMENTS

Introductory

- 2.—(1) In this Part (which adapts certain requirements of this Order in relation to proceedings under Article 389A)—
 - (a) a “written resolution” means a resolution agreed to, or proposed to be agreed to, in accordance with that Article, and
 - (b) a “relevant member” means a member by whom, or on whose behalf, the resolution is required to be signed in accordance with that Article.
- (2) A written resolution is not effective if any of the requirements of this Part is not complied with.

Article 105 (disapplication of pre-emption rights)

- 3.—(1) The following adaptations have effect in relation to a written resolution under Article 105(2) (disapplication of pre-emption rights), or renewing a resolution under that provision.
 - (2) So much of Article 105(5) as requires the circulation of a written statement by the directors with a notice of meeting does not apply, but such a statement must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.
 - (3) Article 105(6) (offences) applies in relation to the inclusion in any such statement of matter which is misleading, false or deceptive in a material particular.

Article 165 (financial assistance for purchase of company's own shares or those of holding company)

4. In relation to a written resolution giving approval under Article 165(4) or (5) (financial assistance for purchase of company's own shares or those of holding company), Article 167(4)(a) (documents to be available at meeting) does not apply, but the documents referred to in that provision

must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

Articles 174, 175 and 177 (authority for off-market purchase or contingent purchase contract of company's own shares)

5.—(1) The following adaptations have effect in relation to a written resolution—

- (a) conferring authority to make an off-market purchase of the company's own shares under Article 174(2),
- (b) conferring authority to vary a contract for an off-market purchase of the company's own shares under Article 174(7), or
- (c) varying, revoking or renewing any such authority under Article 174(3).

(2) Article 174(5) (resolution ineffective if passed by exercise of voting rights by member holding shares to which the resolution relates) does not apply; but for the purposes of Article 389A(1) a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote.

(3) Article 174(6) (documents to be available at company's registered office and at meeting) does not apply, but the documents referred to in that provision and, where that provision applies by virtue of Article 174(7), the further documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

(4) The above adaptations also have effect in relation to a written resolution in relation to which the provisions of Article 174(3) to (7) apply by virtue of—

- (a) Article 175(2) (authority for contingent purchase contract), or
- (b) Article 177(2) (approval of release of rights under contract approved under Article 174 or 175).

Article 183 (approval for payment out of capital)

6.—(1) The following adaptations have effect in relation to a written resolution giving approval under Article 183(2) (redemption or purchase of company's own shares out of capital).

(2) Article 184(2) (resolution ineffective if passed by exercise of voting rights by member holding shares to which the resolution relates) does not apply; but for the purposes of Article 389A(1) a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote.

(3) Article 184(4) (documents to be available at meeting) does not apply, but the documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

Article 327 (approval of director's service contract)

7. In relation to a written resolution approving any such term as is mentioned in Article 327(1) (director's contract of employment for more than five years), Article 327(5) (documents to be available at company's registered office and at meeting) does not apply, but the documents referred to in that provision must be supplied to each relevant member at or before the time at which the resolution is supplied to him for signature.

Article 345 (funding of director's expenditure in performing his duties)

8. In relation to a written resolution giving approval under Article 345(3)(a) (funding a director's expenditure in performing his duties), the requirement of that provision that certain matters be disclosed at the meeting at which the resolution is passed does not apply, but those matters must be disclosed to each relevant member at or before the time at which the resolution is supplied to him for signature.”.

(2) The Schedule inserted after Schedule 15 to the Companies Order by the Companies (Mergers and Divisions) Regulations(Northern Ireland) 1987(11) is renumbered “15B”; and accordingly, in Articles 420A(1) and (8) and 660(1)(s) of that Order (also inserted by those regulations), for “15A” substitute “15B”.

Election by private company to dispense with certain requirements

50.—(1) In Part V of the Companies Order (allotment of shares and debentures), in Article 90(1) (authority of company required for certain allotments) after “this Article” insert “or Article 90A”; and after that Article insert—

“Election by private company as to duration of authority

90A.—(1) A private company may elect (by elective resolution in accordance with Article 387A) that the provisions of this Article shall apply, instead of the provisions of Article 90(4) and (5), in relation to the giving or renewal, after the election, of an authority under that Article.

(2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—

- (a) for an indefinite period, or
- (b) for a fixed period, in which case it must state the date on which it will expire.

(3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.

(4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.

(5) A resolution renewing an authority—

- (a) must state, or re-state, the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and
- (b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.

(6) The references in this Article to the maximum amount of relevant securities that may be allotted shall be construed in accordance with Article 90(6).

(7) If an election under this Article ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—

- (a) if given five years or more before the election ceases to have effect, shall expire forthwith, and
- (b) otherwise, shall have effect as if it had been given for a fixed period of five years.”.

(2) In Chapter IV of Part XII of the Companies Order (meetings and resolutions), after Article 374 (annual general meeting) insert—

“Election by private company to dispense with annual general meetings

374A.—(1) A private company may elect (by elective resolution in accordance with Article 387A) to dispense with the holding of annual general meetings.

(2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

(3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(4) If such a notice is given, the provisions of Article 374(1) and (4) apply with respect to the calling of the meeting and the consequences of default.

(5) If the election ceases to have effect, the company is not obliged under Article 374 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under paragraph (3).”.

(3) In the same Chapter, in Articles 377(4) and 386(3) (majority required to sanction short notice of meeting) insert—

“A private company may elect (by elective resolution in accordance with Article 387A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser percentage, but not less than 90 per cent., as may be specified in the resolution or subsequently determined by the company in general meeting.”.

Elective resolution of private company

51. In Chapter IV of Part XII of the Companies Order (meetings and resolutions) for Article 387A substitute—

“Elective resolution of private company

387A.—(1) An election by a private company for the purposes of—

- (a) Article 90A (election as to duration of authority to allot shares),
- (b) Article 260 (election to dispense with laying of accounts and reports before general meeting),
- (c) Article 374A (election to dispense with holding of annual general meeting),
- (d) Article 377(4) or 386(3) (election as to majority required to authorise short notice of meeting), or
- (e) Article 394 (election to dispense with appointment of auditors annually),

shall be made by resolution of the company in general meeting in accordance with this Article.

Such a resolution is referred to in this Order as an “elective resolution”.

(2) An elective resolution is not effective unless—

- (a) at least 21 days' notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and
- (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.

(3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.

(4) An elective resolution shall cease to have effect if the company is re-registered as a public company.

(5) An elective resolution may be passed or revoked in accordance with this Article, and the provisions referred to in paragraph (1) have effect, notwithstanding any contrary provision in the company's articles of association.”.

Power to make further provision by regulations

52.—(1) The Department may by regulations make provision enabling private companies to elect, by elective resolution in accordance with Article 387A of the Companies Order, to dispense with compliance with such requirements of that Order as may be specified in the regulations, being requirements which appear to the Department to relate primarily to the internal administration and procedure of companies.

(2) The regulations may add to, amend or repeal provisions of that Order and may provide for any such provision to have effect, where an election is made, subject to such adaptations and modifications as appear to the Department to be appropriate.

(3) The regulations may contain such transitional provisions as appear to the Department to be appropriate.

(4) No regulations under this Article shall be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

Appointment and removal of auditors and related matters

Introduction

53. The following Articles amend the provisions of the Companies Order relating to auditors by inserting new provisions in Chapter V of Part XII of that Order in place of Articles 392 to 396 and 398 to 401.

Appointment of auditors

54.—(1) The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

“Appointment of auditors

Duty to appoint auditors

392.—(1) Every company shall appoint an auditor or auditors in accordance with this Chapter.

This is subject to Article 396A (dormant company exempt from obligation to appoint auditors).

(2) Auditors shall be appointed in accordance with Article 393 (appointment at general meeting at which accounts are laid), except in the case of a private company which has elected to dispense with the laying of accounts in which case the appointment shall be made in accordance with Article 393A.

(3) References in this Chapter to the end of the time for appointing auditors are to the end of the time within which an appointment must be made under Article 393(2) or 393A(2), according to whichever of those Articles applies.

(4) Articles 393 and 393A have effect subject to Article 394 under which a private company may elect to dispense with the obligation to appoint auditors annually.

Appointment at general meeting at which accounts laid

393.—(1) This Article applies to every public company and to a private company which has not elected to dispense with the laying of accounts.

(2) The company shall, at each general meeting at which accounts are laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which accounts are laid.

(3) The first auditors of the company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) If the directors fail to exercise their powers under paragraph (3), the powers may be exercised by the company in general meeting.

Appointment by private company which is not obliged to lay accounts

393A.—(1) This Article applies to a private company which has elected in accordance with Article 260 to dispense with the laying of accounts before the company in general meeting.

(2) Auditors shall be appointed by the company in general meeting before the end of the period of 28 days beginning with the day on which copies of the company's annual accounts for the previous financial year are sent to members under Article 246 or, if notice is given under Article 261(2) requiring the laying of the accounts before the company in general meeting, the conclusion of that meeting.

Auditors so appointed shall hold office from the end of that period or, as the case may be, the conclusion of that meeting until the end of the time for appointing auditors for the next financial year.

(3) The first auditors of the company may be appointed by the directors at any time before—

- (a) the end of the period of 28 days beginning with the day on which copies of the company's first annual accounts are sent to members under Article 246, or
- (b) if notice is given under Article 261(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(4) If the directors fail to exercise their powers under paragraph (3), the powers may be exercised by the company in general meeting.

(5) Auditors holding office when the election is made shall, unless the company in general meeting determines otherwise, continue to hold office until the end of the time for appointing auditors for the next financial year; and auditors holding office when an election ceases to have effect shall continue to hold office until the conclusion of the next general meeting of the company at which accounts are laid.

Election by private company to dispense with annual appointment

394.—(1) A private company may elect (by elective resolution in accordance with Article 387A) to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed to be re-appointed for each succeeding financial year on the expiry of the time for appointing auditors for that year, unless—

- (a) a resolution has been passed under Article 258 by virtue of which the company is exempt from the obligation to appoint auditors, or
- (b) a resolution has been passed under Article 401 to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office shall continue to hold office—

- (a) where Article 393 then applies, until the conclusion of the next general meeting of the company at which accounts are laid;
- (b) where Article 393A then applies, until the end of the time for appointing auditors for the next financial year under that Article.

(4) No account shall be taken of any loss of the opportunity of further deemed re-appointment under this Article in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

Appointment by Department in default of appointment by company

395.—(1) If in any case no auditors are appointed, re-appointed or deemed to be re-appointed before the end of the time for appointing auditors, the Department may appoint a person to fill the vacancy.

(2) In such a case the company shall within one week of the end of the time for appointing auditors give notice to the Department of its power having become exercisable.

If a company fails to give the notice required by this Article, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

Filling of casual vacancies

396.—(1) The directors, or the company in general meeting, may fill a casual vacancy in the office of auditor.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

(3) Special notice is required for a resolution at a general meeting of a company—

- (a) filling a casual vacancy in the office of auditor, or
- (b) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy.

(4) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it—

- (a) to the person proposed to be appointed, and
- (b) if the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

Dormant company exempt from obligation to appoint auditors

396A.—(1) A company which by virtue of Article 258 (dormant companies: exemption from provisions as to audit of accounts) is exempt from the provisions of Part VIII relating to the audit of accounts is also exempt from the obligation to appoint auditors.

(2) The following provisions apply if the exemption ceases.

(3) Where Article 393 applies (appointment at general meeting at which accounts are laid), the directors may appoint auditors at any time before the next meeting of the company at which accounts are to be laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(4) Where Article 393A applies (appointment by private company not obliged to lay accounts), the directors may appoint auditors at any time before—

(a) the end of the period of 28 days beginning with the day on which copies of the company's annual accounts are next sent to members under Article 246, or

(b) if notice is given under Article 261(2) requiring the laying of the accounts before the company in general meeting, the beginning of that meeting;

and auditors so appointed shall hold office until the end of that period or, as the case may be, the conclusion of that meeting.

(5) If the directors fail to exercise their powers under paragraph (3) or (4), the powers may be exercised by the company in general meeting.”

(2) In Schedule 23 to the Companies Order (punishment of offences), at the appropriate place insert—

“395(2)	Company failing to give Department notice of non-appointment of auditors.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.”.
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(3) In section 46(4) of the Banking Act 1987(12) (duty of auditor of authorised institution to give notice to Bank of England of certain matters) for “Articles 392” substitute “Chapter V of Part XII and Articles”.

Rights of auditors

55.—(1) The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

*“Rights of auditors***Rights to information**

397A.—(1) The auditors of a company have a right of access at all times to the company's books, accounts and vouchers, and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company, and
- (b) is misleading, false or deceptive in a material particular.

A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

(3) A subsidiary undertaking which is a body corporate incorporated in Northern Ireland, and the auditors of such an undertaking, shall give to the auditors of any parent company of the undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a subsidiary undertaking fails to comply with this paragraph, the undertaking and every officer of it who is in default is guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with this paragraph he is guilty of an offence and liable to a fine.

(4) A parent company having a subsidiary undertaking which is not a body corporate incorporated in Northern Ireland shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary undertaking such information and explanations as they may reasonably require for the purposes of their duties as auditors of that company.

If a parent company fails to comply with this paragraph, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Article 680B (criminal proceedings against unincorporated bodies) applies to an offence under paragraph (3).

Right to attend company meetings, &c.

398.—(1) A company's auditors are entitled—

- (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive;
- (b) to attend any general meeting of the company; and
- (c) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(2) In relation to a written resolution proposed to be agreed to by a private company in accordance with Article 389A, the company's auditors are entitled—

- (a) to receive all such communications relating to the resolution as, by virtue of any provision of Schedule 15A, are required to be supplied to a member of the company,
- (b) to give notice in accordance with Article 389B of their opinion that the resolution concerns them as auditors and should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company,
- (c) to attend any such meeting, and
- (d) to be heard at any such meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(3) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.”

(2) In Schedule 23 to the Companies Order (punishment of offences) at the appropriate place insert—

“397A(2)	Officer of a company making false, misleading or deceptive statement to auditors.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.
397A(3)	Subsidiary undertaking or its auditor failing to give information to auditors of parent company.	Summary.	One-fifth of the statutory maximum.
397A(4)	Parent company failing to obtain from subsidiary undertaking information for purposes of audit.	Summary.	One-fifth of the statutory maximum.”.

Remuneration of auditors

56. The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

“Remuneration of auditors

Remuneration of auditors

398A.—(1) The remuneration of auditors appointed by the company in general meeting shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) The remuneration of auditors appointed by the directors or the Department shall be fixed by the directors or the Department, as the case may be.

(3) There shall be stated in a note to the company’s annual accounts the amount of the remuneration of the company’s auditors in their capacity as such.

(4) For the purposes of this Article “remuneration” includes sums paid in respect of expenses.

(5) This Article applies in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value.

The nature of any such benefit shall also be disclosed.

Remuneration of auditors or their associates for non-audit work

398B.—(1) The Department may make provision by regulations for securing the disclosure of the amount of any remuneration received or receivable by a company’s auditors or their associates in respect of services other than those of auditors in their capacity as such.

(2) The regulations may—

- (a) provide that “remuneration” includes sums paid in respect of expenses,
- (b) apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit require disclosure of its nature and its estimated money value,
- (c) define “associate” in relation to an auditor,
- (d) require the disclosure of remuneration in respect of services rendered to associated undertakings of the company, and

(e) define “associated undertaking” for that purpose.

(3) The regulations may require the auditors to disclose the relevant information in their report or require the relevant information to be disclosed in a note to the company’s accounts and require the auditors to supply the directors of the company with such information as is necessary to enable that disclosure to be made.”.

Removal, resignation, &c. of auditors

57.—(1) The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

“Removal, resignation, &c. of auditors

Removal of auditors

399.—(1) A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the registrar. If a company fails to give the notice required by this paragraph, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Nothing in this Article shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

(4) An auditor of a company who has been removed has, notwithstanding his removal, the rights conferred by Article 398 in relation to any general meeting of the company—

- (a) at which his term of office would otherwise have expired, or
- (b) at which it is proposed to fill the vacancy caused by his removal.

In such a case the references in that Article to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

Rights of auditors who are removed or not re-appointed

399A.—(1) Special notice is required for a resolution at a general meeting of a company—

- (a) removing an auditor before the expiration of his term of office, or
- (b) appointing as auditor a person other than a retiring auditor.

(2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4) The company shall (unless the representations are received by it too late for it to do so)—

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) If a copy of any such representations is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this Article are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

Resignation of auditors

400.—(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

The notice is not effective unless it is accompanied by the statement required by Article 401A.

(2) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(3) The company shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the registrar.

If default is made in complying with this paragraph, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, a daily default fine.

Rights of resigning auditors

400A.—(1) This Article applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the company.

(2) He may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) He may request the company to circulate to its members—

- (a) before the meeting convened on his requisition, or
- (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The company shall (unless the statement is received too late for it to comply)—

- (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made, and
- (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) If the directors do not within 21 days from the date of the deposit of a requisition under this Article proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.

(6) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(7) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this Article are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(8) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by Article 398 in relation to any such general meeting of the company as is mentioned in paragraph (3)(a) or (b). In such a case the references in that Article to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

Termination of appointment of auditors not appointed annually

401.—(1) When an election is in force under Article 394 (election by private company to dispense with annual appointment), any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

No member may deposit more than one such notice in any financial year of the company.

(2) If such a notice is deposited it is the duty of the directors—

- (a) to convene a general meeting of the company for a date not more than 28 days after the date on which the notice was given, and
- (b) to propose at the meeting a resolution in a form enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(3) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed re-appointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

The period immediately following the distribution of accounts means the period beginning with the day on which copies of the company's annual accounts are sent to members of the company under Article 246 and ending 14 days after that day.

(4) If the directors do not within 14 days from the date of the deposit of the notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this Article by a member shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by a member by reason of the failure of the directors duly to convene a meeting shall be made good to him by the company; and any such sums shall be recouped by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or other remuneration in respect of their services.

(7) This Article has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable by reason of the auditors' appointment being terminated under this Article."

(2) In Schedule 23 to the Companies Order (punishment of offences), at the appropriate place insert—

“399(2)	Failing to give notice to registrar of removal of auditor.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
400(3)	Company failing to forward notice of auditor’s resignation to registrar.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
400A(5)	Directors failing to convene meeting requisitioned by resigning auditor.	1. On indictment. 2. Summary.	A fine. The statutory maximum.”.	

Statement by person ceasing to hold office as auditor

58.—(1) The following Articles are inserted in Chapter V of Part XII of the Companies Order (auditors)—

“Statement by person ceasing to hold office as auditor

401A.—(1) Where an auditor ceases for any reason to hold office, he shall deposit at the company’s registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either—

- (a) send a copy of it to every person who under Article 246 is entitled to be sent copies of the accounts, or
- (b) apply to the court.

(4) The company shall if it applies to the court notify the auditor of the application.

(5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—

- (a) it shall direct that copies of the statement need not be sent out, and
- (b) it may further order the company’s costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;

and the company shall within 14 days of the court’s decision send to the persons mentioned in paragraph (3)(a) a statement setting out the effect of the order.

(7) If the court is not so satisfied, the company shall within 14 days of the court’s decision—

- (a) send copies of the statement to the persons mentioned in paragraph (3)(a), and
- (b) notify the auditor of the court’s decision;

and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.

Offences of failing to comply with Article 401A

401B.—(1) If a person ceasing to hold office as auditor fails to comply with Article 401A he is guilty of an offence and liable to a fine.

(2) In proceedings for an offence under paragraph (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) Articles 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to an offence under paragraph (1).

(4) If a company makes default in complying with Article 401A, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.”.

(2) In Schedule 21 to the Companies Order (unregistered companies), in the entry for Articles 392 to 401 for “401” substitute “401B”.

(3) In Schedule 23 to the Companies Order (punishment of offences), at the appropriate place insert—

“401B(1)	Person ceasing to hold office as auditor failing to deposit statement as to circumstances.	1. On indictment. Summary.	2. A fine. The statutory maximum.	
401B(4)	Company failing to comply with requirements as to statement of person ceasing to hold office as auditor.	1. On indictment. Summary.	2. A fine. The statutory maximum.	One-tenth of the statutory maximum.”.

Company records and related matters

Delivery of documents to the registrar

59.—(1) For Article 655 of the Companies Order (size, durability, &c. of documents delivered to the registrar) substitute—

“Delivery to the registrar of documents in legible form

655.—(1) This Article applies to the delivery to the registrar under any provision of the Companies Orders of documents in legible form.

- (2) The document must—
- (a) state in a prominent position the registered number of the company to which it relates,
 - (b) satisfy any requirements prescribed by regulations for the purposes of this Article, and
 - (c) conform to such requirements as the registrar may specify for the purpose of enabling him to copy the document.

(3) If a document is delivered to the registrar which does not comply with the requirements of this Article, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

- (4) Where the registrar serves such a notice, then, unless a replacement document—
- (a) is delivered to him within 14 days after the service of the notice, and
 - (b) complies with the requirements of this Article (or Article 656) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

But for the purposes of any statutory provision imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar's notice.”

- (2) For Article 656 of the Companies Order (power of registrar to accept information on microfilm, &c.) substitute—

“Delivery to the registrar of documents otherwise than in legible form

656.—(1) This Article applies to the delivery to the registrar under any provision of the Companies Orders of documents otherwise than in legible form.

(2) Any requirement to deliver a document to the registrar, or to deliver a document in the prescribed form, is satisfied by the communication to the registrar of the requisite information in any non-legible form prescribed for the purposes of this Article by regulations or approved by the registrar.

(3) Where the document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.

- (4) The document must—
- (a) contain in a prominent position the registered number of the company to which it relates,
 - (b) satisfy any requirements prescribed by regulations for the purposes of this Article, and
 - (c) be furnished in such manner, and conform to such requirements, as the registrar may specify for the purpose of enabling him to read and copy the document.

(5) If a document is delivered to the registrar which does not comply with the requirements of this Article, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

- (6) Where the registrar serves such a notice, then, unless a replacement document—
- (a) is delivered to him within 14 days after the service of the notice, and

- (b) complies with the requirements of this Article (or Article 655) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

But for the purposes of any statutory provision imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar's notice.

- (7) The Department may by regulations make further provision with respect to the application of this Article in relation to instantaneous forms of communication.”.

Keeping and inspection of company records

60.—(1) In Part XXIV of the Companies Order (the registrar of companies, his functions and office), after Article 656 insert—

“The keeping of company records by the registrar

656A.—(1) The information contained in a document delivered to the registrar under the Companies Orders may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in legible form.

This is sufficient compliance with any duty of his to keep, file or register the document.

- (2) The originals of documents delivered to the registrar in legible form shall be kept by him for ten years, after which they may be destroyed.

(3) Where a company has been dissolved, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any records in his custody relating to the company may be removed to the Public Record Office of Northern Ireland; and records in respect of which such a direction is given shall be disposed of in accordance with the statutory provisions relating to that Office.

(4) In paragraph (3) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.”.

(2) For Articles 658 and 659 of the Companies Order (inspection of documents kept by the registrar) substitute—

“Inspection, &c. of records kept by the registrar

658.—(1) Any person may inspect any records kept by the registrar for the purposes of the Companies Orders and may require—

- (a) a copy, in such form as the registrar considers appropriate, of any information contained in those records, or
(b) a certified copy of, or extract from, any such record.

(2) The right of inspection extends to the originals of documents delivered to the registrar in legible form only where the record kept by the registrar of the contents of the document is illegible or unavailable.

(3) A copy of or extract from a record kept at the office for the registration of companies, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of any document delivered to him under the Companies Orders, is in all legal proceedings admissible in evidence as of equal validity with the original document and as evidence of any fact stated therein of which direct oral evidence would be admissible.

This is subject to compliance with any applicable rules of court under section 2 of the Civil Evidence Act (Northern Ireland) 1971 or Article 68(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (which relate to evidence from computer records).

(4) Copies of or extracts from records furnished by the registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.

(5) No process for compelling the production of a record kept by the registrar shall issue from any court except with the leave of the court; and any such process shall bear on it a statement that it is issued with the leave of the court.

Certificate of incorporation

659. Any person may require a certificate of the incorporation of a company, signed by the registrar or authenticated by his official seal.

Provision and authentication by registrar of documents is non-legible form

659A.—(1) Any requirement of the Companies Orders as to the supply by the registrar of a document may, if the registrar thinks fit, be satisfied by the communication by the registrar of the requisite information in any non-legible form prescribed for the purposes of this Article by regulations or approved by him.

(2) Where the document is required to be signed by him or sealed with his official seal, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.”

Supplementary provisions as to company records and related matters

61.—(1) In Part XXIV of the Companies Order (the registrar of companies, his functions and offices), after Article 664 insert—

“Interpretation

664A.—(1) In this Part—

“document” includes information recorded in any form; and

“legible”, in the context of documents in legible or non-legible form, means capable of being read with the naked eye.

(2) References in this Part to delivering a document include sending, forwarding, producing or (in the case of a notice) giving it.”

(2) In Article 657(1) of the Companies Order (fees)—

(a) in sub-paragraph (a) for the words from “any notice or other document” to the end substitute “any document which under those Orders is required to be delivered to him”, and

(b) in sub-paragraph (b) omit “or other material”.

(3) Omit Articles 661 and 664 of the Companies Order (removal and destruction of old records).

(4) In Article 662(1) (enforcement of duty to make returns, &c.), for the words from “file with” to “or other document” substitute “deliver a document to the registrar”.

(5) In Article 2A(3) of the Companies Order (provisions applying to other statutory provisions as to the Companies Orders)—

(a) after “656(1),” insert “656A(1),”

(b) after “657(1)(a) and (3),” insert “658(1) and (3),” and

(c) for “659(4)” substitute “659A”.

(6) After Article 2A of the Companies Order insert—

“Relationship of this Order to Parts IV and V of the Financial Services Act 1986

2B. In Articles 655(1), 656(1), 656A(1), 657(1)(a) and (3), 658(1) and (3), 659A and 662(1) references to the Companies Orders include Parts IV and V of the Financial Services Act 1986.”.

(7) In Schedule 21 to the Companies Order (unregistered companies), in the entry for Part XXIV for “Articles 655, 657 to 659, 661 and 662” substitute “Articles 655 to 659A, 662 and 664A”.

Miscellaneous

“Subsidiary”, “holding company” and “wholly-owned subsidiary”

62.—(1) In Part I of the Companies Order (introductory and interpretation), for Article 4 substitute—

““Subsidiary”, “holding company” and “wholly-owned subsidiary”

4.—(1) A company is a “subsidiary” of another company, its “holding company”, if that other company—

- (a) holds a majority of the voting rights in it, or
- (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
- (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,

or if it is a subsidiary of a company which is itself a subsidiary of that other company.

(2) A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other’s wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.

(3) In this Article “company” includes any body corporate.

Provisions supplementing Article 4

4A.—(1) The provisions of this Article explain expressions used in Article 4 and otherwise supplement that Article.

(2) In Article 4(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.

(3) In Article 4(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—

- (a) a company shall be treated as having the right to appoint to a directorship if—
 - (i) a person’s appointment to it follows necessarily from his appointment as director of the company, or
 - (ii) the directorship is held by the company itself; and

- (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.
- (4) Rights which are exercisable only in certain circumstances shall be taken into account only—
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
- (b) when the circumstances are within the control of the person having the rights;
- and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.
- (5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- (6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.
- (7) Rights attached to shares held by way of security shall be treated as held by the person providing the security—
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.
- (8) Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in paragraph (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.
- (9) For the purposes of paragraph (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—
- (a) any subsidiary or holding company of that company, or
- (b) any subsidiary of a holding company of that company.
- (10) The voting rights in a company shall be reduced by any rights held by the company itself.
- (11) References in any provision of paragraphs (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.
- (12) In this Article “company” includes any body corporate.”.

(2) Any reference in any statutory provision to a “subsidiary” or “holding company” within the meaning of Article 4 of the Companies Order shall, subject to any express amendment or saving made by or under this Order, be read as referring to a subsidiary or holding company as defined in Article 4 as substituted by paragraph(1).

This applies whether the reference is specific or general, or express or implied.

(3) In Part I of the Companies Order (introductory and interpretation) after Article 4A insert—

“Power to amend Articles 4 and 4A

4B.—(1) The Department may by regulations amend Articles 4 and 4A so as to alter the meaning of the expressions “holding company”, “subsidiary” or “wholly-owned subsidiary”.

(2) Any amendment made by regulations under this Article does not apply for the purposes of statutory provisions outside the Companies Orders unless the regulations so provide.

(3) So much of section 29(1) of the Interpretation Act (Northern Ireland) 1954 (effect of repeal and re-enactment) as relates to statutory documents shall not apply in relation to any repeal and re-enactment effected by regulations made under this Article.”.

(4) Schedule 3 contains amendments and savings consequential on the amendments made by this Article; and the Department may by regulations make such further amendments or savings as appear to it to be necessary or expedient.

(5) So much of section 29(1) of the Interpretation Act (Northern Ireland) 1954(13) (effect of repeal and re-enactment) as relates to statutory documents shall not apply in relation to the repeal and re-enactment by this Article of Article 4 of the Companies Order.

Form of articles for partnership company

63. In Chapter I of Part II of the Companies Order (company formation), after Article 19 (Tables A, C, D and E) insert—

“Table G

19A.—(1) The Department may by regulations prescribe a Table G containing articles of association appropriate for a partnership company, that is, a company limited by shares whose shares are intended to be held to a substantial extent by or on behalf of its employees.

(2) A company limited by shares may for its articles adopt the whole or any part of that Table.

(3) If in consequence of regulations under this Article Table G is altered, the alteration does not affect a company registered before the alteration takes effect, or repeal as respects that company any portion of the Table.”.

Membership of holding company

64.—(1) In Chapter I of Part II of the Companies Order (company formation), for Article 33 (membership of holding company) substitute—

“Membership of holding company

33.—(1) Except as mentioned in this Article, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary is void.

(2) The prohibition does not apply where the subsidiary is concerned only as personal representative or trustee unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business which includes the lending of money;
- (b) any such interest as is mentioned in Part I of Schedule 2.

(3) The prohibition does not apply where the subsidiary is concerned only as a market maker.

For this purpose a person is a market maker if—

- (a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services Act 1986) as willing to buy and sell securities at prices specified by him, and
 - (b) he is recognised as so doing by that investment exchange.
- (4) Where a body corporate became a holder of shares in a company—
- (a) before 1st April 1961, or
 - (b) on or after that date and before the coming into operation of Article 64 of the Companies (No. 2) (Northern Ireland) Order 1990, in circumstances in which this Article as it then had effect did not apply,

but at any time after the coming into operation of that Article falls within the prohibition in paragraph (1) in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this paragraph, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(5) Where a body corporate becomes a holder of shares in a company after the coming into operation of that Article in circumstances in which the prohibition in paragraph (1) does not apply, but subsequently falls within that prohibition in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this paragraph, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(6) Where a body corporate is permitted to continue as a member of a company by virtue of paragraph (4) or (5), an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company; but for so long as the prohibition in paragraph (1) would apply, apart from paragraph (4) or (5), it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(7) The provisions of this Article apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

(8) In relation to a company other than a company limited by shares, the references in this Article to shares shall be construed as references to the interest of its members as such, whatever the form of that interest.”.

(2) In Schedule 2 to the Companies Order (interpretation of references to “beneficial interest”), in paragraphs 1(1), 3(1) and 4(2) for “as respects Article 33(4)” substitute “as this paragraph applies for the purposes of Article 33(2)”.

Company contracts and execution of documents by companies

65.—(1) In Chapter III of Part II of the Companies Order (a company’s capacity; the formalities of carrying on business), for Article 46 (form of company contracts) substitute—

“Form of company contracts

46. A contract may be made—

- (a) by a company, by writing under its common seal, or
- (b) on behalf of a company, by any person acting under its authority, express or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.”.

(2) After that Article insert—

“Execution of documents

46A.—(1) The following provisions have effect with respect to the execution of documents by a company.

(2) A document is executed by a company by the affixing of its common seal.

(3) A company need not have a common seal, however, and the following paragraphs apply whether it does or not.

(4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

(5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.”.

(3) After the Article inserted by paragraph (2) insert—

“Pre-incorporation contracts and deeds

46B.—(1) A contract which purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

(2) Paragraph (1) applies to the making of a deed as it applies to the making of a contract.”.

(4) In Schedule 21 of the Companies Order (provisions applying to unregistered companies), at the appropriate place insert—

“Article 46	Company contracts.	Subject to Article 667(3).
Article 46A	Execution of documents.	Subject to Article 667(3).
Article 46B	Pre-incorporation contracts and deeds.	Subject to Article 667(3).”.

(5) The Department may make provision by regulations applying Articles 46 to 46B of the Companies Order (company contracts; execution of documents; pre-incorporation contracts and deeds) to companies incorporated outside Northern Ireland, subject to such exceptions, adaptations or modifications as may be specified in the regulations.

(6) Schedule 4 contains further minor and consequential amendments relating to company contracts, the execution of documents by companies and related matters.

Members' rights to damages, &c.

66.—(1) In Part V of the Companies Order (allotment of shares and debentures), before Article 122 and after the heading “Other matters arising out of allotment, etc.”, insert—

“Right to damages, etc. not affected

121A. A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company’s register in respect of shares.”.

(2) In Article 126 of the Companies Order (extended operation of certain provisions applying to public companies) for “and 120 to 125” substitute “, 120, 121 and 122 to 125”.

Financial assistance for purposes of employees' share scheme

67. In Chapter VI of Part VI of the Companies Order (financial assistance by company for purchase of its own shares), in Article 163 (transactions not prohibited), for paragraph (4)(b) (provision of money in accordance with employees' share scheme) substitute—

“(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees' share scheme,”.

Issue of redeemable shares

68.—(1) In Part VI of the Companies Order (share capital, its increase, maintenance and reduction), Chapter VII (redeemable shares, purchase by a company of its own shares) is amended as follows.

(2) After Article 169 (power to issue redeemable shares) insert—

“Terms and manner of redemption

169A.—(1) Redeemable shares may not be issued unless the following conditions are satisfied as regards the terms and manner of redemption.

(2) The date on or by which, or dates between which, the shares are to be or may be redeemed must be specified in the company’s articles or, if the articles so provide, fixed by the directors, and in the latter case the date or dates must be fixed before the shares are issued.

(3) Any other circumstances in which the shares are to be or may be redeemed must be specified in the company’s articles.

(4) The amount payable on redemption must be specified in, or determined in accordance with, the company’s articles, and in the latter case the articles must not provide for the amount to be determined by reference to any person’s discretion or opinion.

(5) Any other terms and conditions of redemption shall be specified in the company’s articles.

(6) Nothing in this Article shall be construed as requiring a company to provide in its articles for any matter for which provision is made by this Order.”.

(3) In Article 170 (financing, &c. of redemption)—

(a) omit paragraph (3) (which is superseded by the new Article 169A), and

(b) in paragraph (4) (cancellation of shares on redemption) for “redeemed under this Article” substitute “redeemed under this Chapter”.

(4) In Article 172 (power of company to purchase own shares), for paragraph (2) (application of provisions relating to redeemable shares) substitute—

“(2) Articles 169, 170 and 171 apply to the purchase by a company under this Article of its own shares as they apply to the redemption of redeemable shares.”.

Disclosure of interests in shares

69.—(1) Part VII of the Companies Order (disclosure of interests in shares) is amended as follows.

(2) In Article 207(2) (notifiable interests), for the words from “the percentage” to the end substitute “3 per cent. of the nominal value of that share capital”.

The order bringing the above amendment into operation may make such provision as appears to the Head of the Department appropriate as to the obligations of a person whose interest in a company’s shares becomes notifiable by virtue of the amendment coming into operation.

(3) In Articles 210(1) and (4) and 214(8) (which require notification of certain matters within a specified period) for “5 days” substitute “2 days”.

(4) In Article 210 (particulars to be contained in notification), for paragraph (3) substitute—

“(3) A notification (other than one stating that a person no longer has a notifiable interest) shall include the following particulars, so far as known to the person making the notification at the date when it is made—

- (a) the identity of each registered holder of shares to which the notification relates and the number of such shares held by each of them, and
- (b) the number of such shares in which the interest of the person giving the notification is such an interest as is mentioned in Article 216(5).”.

(5) After Article 218 insert—

“Power to make further provision by regulations

218A.—(1) The Department may by regulations amend—

- (a) the definition of “relevant share capital” (Article 206(2)),
- (b) the percentage giving rise to a “notifiable interest” (Article 207(2)),
- (c) the periods within which an obligation of disclosure must be fulfilled or a notice must be given (Articles 210(1) and (4) and 214(8)),
- (d) the provisions as to what is taken to be an interest in shares (Article 216) and what interests are to be disregarded (Article 217), and
- (e) the provisions as to company investigations (Article 220);

and the regulations may amend, replace or repeal the provisions referred to above and make such other consequential amendments or repeals of provisions of this Part as appear to the Department to be appropriate.

(2) The regulations may contain such transitional provisions as appear to the Department to be appropriate, and may in particular make provision as to the obligations of a person whose interest in a company’s shares becomes or ceases to be notifiable by virtue of the regulations.”.

(6) Any regulations made under Article 217(1)(h) which are in force immediately before the repeal of that sub-paragraph by this Order shall have effect as if made under Article 218A(1)(d) as inserted by paragraph (5).

Orders imposing restrictions on shares

70.—(1) The Department may by regulations make such amendments of the provisions of the Companies Order relating to orders imposing restrictions on shares as appear to it necessary or expedient—

- (a) for enabling orders to be made in a form protecting the rights of third parties;
- (b) with respect to the circumstances in which restrictions may be relaxed or removed;
- (c) with respect to the making of interim orders by a court.

(2) The provisions referred to in paragraph (1) are Article 218(5), Article 224(1) and (2), Article 438 and Part XVI of the Companies Order.

(3) The regulations may contain such transitional provisions as appear to the Department to be appropriate.

(4) Regulations under this Article shall not be made unless a draft of the regulations has been laid before and approved by resolution of the Assembly.

A company's registered office

71. For Article 295 of the Companies Order (registered office) substitute—

“Registered office

295.—(1) A company shall at all times have a registered office to which all communications and notices may be addressed.

(2) On incorporation the situation of the company's registered office is that specified in the statement sent to the registrar under Article 21.

(3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the registrar.

(4) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.

(5) For the purposes of any duty of a company—

- (a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or
- (b) to mention the address of its registered office in any document,

a company which has given notice to the registrar of a change in the situation of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.

(6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in paragraph (5)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation of its registered office, but—

- (a) resumes performance of that duty at other premises as soon as practicable, and
- (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,

it shall not be treated as having failed to comply with that duty.

(7) In proceedings for an offence of failing to comply with any such duty as is mentioned in paragraph (5), it is for the person charged to show that by reason of the matters referred to in that paragraph or paragraph (6) no offence was committed.”

Effecting of insurance for officers and auditors of company

72.—(1) In Article 318 of the Companies Order (provisions exempting officers and auditors from liability), for paragraph (3) (permitted provisions) substitute—

“(3) This Article does not prevent a company—

- (a) from purchasing and maintaining for any such officer or auditor insurance against any such liability, or
- (b) from indemnifying any such officer or auditor against any liability incurred by him—
 - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or
 - (ii) in connection with any application under Article 154(3) or (4) (acquisition of shares by innocent nominee) or Article 675 (general power to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court.”.

(2) In Part I of Schedule 7 to the Companies Order (general matters to be dealt with in directors' report), after paragraph 5 insert—

“Insurance effected for officers or auditors

5A. Where in the financial year the company has purchased or maintained any such insurance as is mentioned in Article 318(3)(a) (insurance of officers or auditors against liabilities in relation to the company), that fact shall be stated in the report.”.

Increase of limits on certain exemptions

73. Part XI of the Companies Order (enforcement of fair dealing by directors) is amended as follows—

- (a) in Article 340(1)(b) (short-term quasi-loans) for “£1,000” substitute “£5,000”;
- (b) in Article 342 (loans of small amounts) for “£2,500” substitute “£5,000”;
- (c) in Article 346(4) and (6) (loans or quasi-loans by money-lending company) for “£50,000” substitute “£100,000”.

Annual returns

74.—(1) In Part XII of the Companies Order (company administration and procedure), for Chapter III (annual return) substitute—

“CHAPTER III ANNUAL RETURN

Duty to deliver annual returns

371.—(1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's “return date”, that is—

- (a) the anniversary of the company's incorporation, or

- (b) if the company's last return delivered in accordance with this Chapter was made up to a different date, the anniversary of that date.

(2) Each return shall—

- (a) be in the prescribed form,
- (b) contain the information required by or under the following provisions of this Chapter, and
- (c) be signed by a director or the secretary of the company;

and it shall be delivered to the registrar within 28 days after the date on which it is made up.

(3) If a company fails to deliver an annual return in accordance with this Chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.

The contravention continues until such time as an annual return made up to that return date and complying with the requirements of paragraph (2) (except as to date of delivery) is delivered by the company to the registrar.

(4) Where a company is guilty of an offence under paragraph (3), every director or secretary of the company is similarly liable unless he shows that he took all reasonable steps to avoid the commission or continuation of the offence.

(5) The references in this Article to a return being delivered "in accordance with this Chapter" are—

- (a) in relation to a return made after the coming into operation of Article 74 of the Companies (No. 2) (Northern Ireland) Order 1990, to a return with respect to which all the requirements of paragraph (2) are complied with;
- (b) in relation to a return made before that time, to a return with respect to which the formal and substantive requirements of this Chapter as it then had effect were complied with, whether or not the return was delivered in time.

Contents of annual return: general

372.—(1) Every annual return shall state the date to which it is made up and shall contain the following information—

- (a) the address of the company's registered office;
- (b) the type of company it is and its principal business activities;
- (c) the name and address of the company secretary;
- (d) the name and address of every director of the company;
- (e) in the case of each individual director—
 - (i) his nationality, date of birth and business occupation, and
 - (ii) such particulars of other directorships and former names as are required to be contained in the company's register of directors;
- (f) in the case of any corporate director, such particulars of other directorships as would be required to be contained in that register in the case of an individual;
- (g) if the register of members is not kept at the company's registered office, the address of the place where it is kept;
- (h) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept at the company's registered office, the address of the place where it is kept;
- (i) if the company has elected—

- (i) to dispense under Article 260 with the laying of accounts and reports before the company in general meeting, or
 - (ii) to dispense under Article 374A with the holding of annual general meetings, a statement to that effect.
- (2) The information as to the company's type shall be given by reference to the classification scheme prescribed for the purposes of this Article.
- (3) The information as to the company's principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.
- (4) A person's "name" and "address" mean, respectively—
- (a) in the case of an individual, his Christian name (or other forename) and surname and his usual residential address;
 - (b) in the case of a corporation or Scottish firm, its corporate or firm name and its registered or principal office.
- (5) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (6) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the names and addresses of the partners.

Contents of annual return: particulars of share capital and shareholders

- 372A.**—(1) The annual return of a company having a share capital shall contain the following information with respect to its share capital and members.
- (2) The return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.
- (3) The return shall state with respect to each class of shares in the company—
- (a) the nature of the class, and
 - (b) the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.
- (4) The return shall contain a list of the names and addresses of every person who—
- (a) is a member of the company on the date to which the return is made up, or
 - (b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company);
- and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.
- (5) The return shall also state—
- (a) the number of shares of each class held by each member of the company at the date to which the return is made up, and
 - (b) the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.
- (6) The return may, if either of the two immediately preceding returns has given the full particulars required by paragraphs (4) and (5), give only such particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.

(7) Paragraphs (4) and (5) do not require the inclusion of particulars entered in an external branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up.

Those particulars shall be included in the company's next annual return after they are received.

(8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

Supplementary provisions: regulations and interpretation

373.—(1) The Department may by regulations make further provision as to the information to be given in a company's annual return, which may amend or repeal the provisions of Articles 372 and 372A.

(2) For the purposes of this Chapter, except Article 371(2)(c) (signature of annual return), a shadow director shall be deemed to be a director.”

(2) Where a company was, immediately before the coming into operation of this Article, in default with respect to the delivery of one or more annual returns, this Article does not affect its obligation to make such a return (in accordance with Chapter III of Part XII of the Companies Order as it then had effect) or any liability arising from failure to do so.

(3) In Schedule 23 to the Companies Order (punishment of offences) in the entry relating to Article 371(7), in the first column for “371(7)” substitute “371(3)” and for the words in the second column substitute “Company failing to deliver annual return in due time”.

(4) In Schedule 1 to the Companies (Northern Ireland) Order 1989⁽¹⁴⁾ (matters relevant to determining unfitness of directors), in paragraph 4 (failure of company to comply with certain provisions), for sub-paragraphs (f) and (g) substitute—

“(f) Article 371 (duty of company to make annual returns);”.

(5) In section 565(7) of the Income and Corporation Taxes Act 1988⁽¹⁵⁾ (conditions for exemption from provisions relating to sub-contractors in construction industry: compliance with requirements of Companies Order), in paragraph (d) for “Articles 371, 372 and 373” substitute “Articles 371 to 373”.

Application to declare dissolution of company void

75.—(1) Article 602 of the Companies Order (power of court to declare dissolution of company void) is amended as follows.

(2) In paragraph (1) omit the words “at any time within 2 years of the date of the dissolution”.

(3) After paragraph (3) add—

“(4) Subject to the following provisions, an application under this Article may not be made after the end of the period of two years from the date of the dissolution of the company.

(5) An application for the purpose of bringing proceedings against the company—

(a) for damages in respect of personal injuries (including any sum claimed by virtue of section 14(2)(c) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (funeral expenses)), or

(b) for damages under the Fatal Accidents (Northern Ireland) Order 1977,

⁽¹⁴⁾ 1989 NI 18

⁽¹⁵⁾ 1988 c. 1

may be made at any time; but no order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any statutory provision as to the time within which proceedings must be brought.

(6) Nothing in paragraph (5) affects the power of the court on making an order under this Article to direct that the period between the dissolution of the company and the making of the order shall not count for the purposes of any such statutory provision.

(7) In paragraph (5)(a) “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.”.

(4) An application may be made under Article 602(5) of the Companies Order as inserted by paragraph (3) (proceedings for damages for personal injury, &c.) in relation to a company dissolved before the coming into operation of this Article notwithstanding that the time within which the dissolution might formerly have been declared void under that Article had expired before this Article came into operation.

But no such application shall be made in relation to a company dissolved more than twenty years before the coming into operation of this Article.

(5) Except as provided by paragraph (4), the amendments made by this Article do not apply in relation to a company which was dissolved more than two years before the coming into operation of this Article.

Abolition of doctrine of deemed notice

76.—(1) In Part XXIV of the Companies Order (the registrar of companies, his functions and office), after Article 660 insert—

“Exclusion of deemed notice

660A.—(1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document kept by the registrar (and thus available for inspection) or made available by the company for inspection.

(2) This does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such inquiries as ought reasonably to be made.

(3) In this Article “document” includes any material which contains information.

(4) Nothing in this Article affects the operation of Article 417F (under which a person taking a charge over a company’s property is deemed to have notice of matters disclosed on the companies charges register).”.

(2) In Schedule 21 to the Companies Order (unregistered companies), in the entry for Part XXIV at the appropriate place insert—

“Article 660A	Abolition of doctrine of deemed notice.	Subject to Article 667(3).”.
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Rights of inspection and related matters

77.—(1) In Part XXV of the Companies Order (miscellaneous and supplementary provisions), after Article 672 insert—

“Obligations of company as to inspection of registers, &c.

672A.—(1) The Department may make provision by regulations as to the obligations of a company which is required by any provision of this Order—

- (a) to make available for inspection any register, index or document, or
- (b) to provide copies of any such register, index or document, or part of it;

and a company which fails to comply with the regulations shall be deemed to have refused inspection or, as the case may be, to have failed to provide a copy.

(2) The regulations may make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection.

(3) The regulations may define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.

(4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.

(5) Nothing in any provision of this Order or in the regulations shall be construed as preventing a company from affording more extensive facilities than are required by the regulations or, where a fee may be charged, from charging a lesser fee than that prescribed or no fee at all.”

(2) In Article 179(5) of the Companies Order (contract for purchase by company of its own shares), omit the words from “, during business hours” to “for inspection”.

(3) In Article 185(5) of the Companies Order (statutory declaration and auditors' report relating to payment out of capital), in sub-paragraph (b) omit the words from “during business hours” to “period”.

(4) In Article 200 of the Companies Order (register of debenture holders)—

- (a) in paragraph (1), omit the words from “(but” to “for inspection)” and for the words from “a fee of 5 pence” to the end substitute “such fee as may be prescribed”;
- (b) in paragraph (2) for the words from “10 pence” to the end substitute “such fee as may be prescribed”; and
- (c) in paragraph (3), after “on payment” insert “of such fee as may be prescribed” and omit sub-paragraphs (a) and (b).

(5) In Article 227 of the Companies Order (register of interests in shares, &c.)—

- (a) in paragraph (1), omit the words from “during” to “for inspection”;
- (b) in paragraph (2) for the words from “10 pence” to “required to be copied” substitute “such fee as may be prescribed”.

(6) In Article 296 of the Companies Order (register of directors and secretaries), in paragraph (3), omit the words from “during” to “for inspection)” and for the words from “5 pence” to the end substitute “such fee as may be prescribed”.

(7) In Article 326 of the Companies Order (directors' service contracts), in paragraph (7) omit the words from “, during business hours” to “for inspection”.

(8) In Article 364 of the Companies Order (register and index of members' names)—

- (a) in paragraph (1), omit “during business hours” and for “the appropriate charge” substitute “such fee as may be prescribed”;
- (b) omit paragraph (2);
- (c) in paragraph (3) for “the appropriate charge” substitute “such fee as may be prescribed”; and
- (d) omit paragraph (4).

(9) In Article 391 of the Companies Order (minutes of proceedings of general meetings)—

- (a) in paragraph (1), omit “during business hours”;
 - (b) omit paragraph (2); and
 - (c) in paragraph (3), after “entitled” insert “on payment of such fee as may be prescribed” and omit the words from “at a charge” to the end.
- (10) In Part IV of Schedule 13 to the Companies Order (register of directors' interests)—
- (a) in paragraph 24, omit the words from “during” to “for inspection)” and for the words from “5 pence” to the end substitute “such fee as may be prescribed”; and
 - (b) in paragraph 25(1), for the words from “10 pence” to the end substitute “such fee as may be prescribed”.
- (11) In Schedule 21 to the Companies Order (provisions applying to unregistered companies), in the entry relating to Part XXV at the appropriate place insert—

“Article 672A	Rights of inspection and related matters.	To apply only so far as this provision has effect in relation to provisions applying by virtue of the foregoing provisions of this Schedule.”.
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Minor amendments

78. The Companies Order has effect with the further amendments specified in Schedule 5.

PART V

FINANCIAL MARKETS AND INSOLVENCY

Introduction

Introduction

79. This Part has effect for the purposes of safeguarding the operation of certain financial markets by provisions with respect to—

- (a) the insolvency, winding up or default of a person party to transactions in the market (Articles 80 to 94),
- (b) the effectiveness or enforcement of certain charges given to secure obligations in connection with such transactions (Articles 95 to 98), and
- (c) rights and remedies in relation to certain property provided as cover for margin in relation to such transactions or subject to such a charge (Articles 99 to 103).

Recognised investment exchanges and clearing houses

Market contracts

80.—(1) This Part applies to the following descriptions of contract connected with a recognised investment exchange or recognised clearing house.

The contracts are referred to in this Part as “market contracts”.

- (2) In relation to a recognised investment exchange, this Part applies to—

- (a) contracts entered into by a member or designated non-member of the exchange which are made on or otherwise subject to the rules of the exchange; and
- (b) contracts subject to the rules of the exchange entered into by the exchange for the purposes of or in connection with the provision of clearing services.

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

(3) In relation to a recognised clearing house, this Part applies to contracts subject to the rules of the clearing house entered into by the clearing house for the purposes of or in connection with the provision of clearing services for a recognised investment exchange.

(4) The Department may by regulations make further provision as to the contracts to be treated as “market contracts”, for the purposes of this Part, in relation to a recognised investment exchange or recognised clearing house.

(5) The regulations may add to, amend or repeal the provisions of paragraphs (2) and (3).

Modifications of the law of insolvency

81.—(1) The general law of insolvency has effect in relation to market contracts, and action taken under the rules of a recognised investment exchange or recognised clearing house with respect to such contracts, subject to the provisions of Articles 82 to 88.

(2) So far as those provisions relate to insolvency proceedings in respect of a person other than a defaulter, they apply in relation to—

- (a) proceedings in respect of a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house, and
- (b) proceedings in respect of a party to a market contract begun after a recognised investment exchange or recognised clearing house has taken action under its default rules in relation to a person party to the contract as principal,

but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from market contracts fall to be dealt with in the proceedings.

(3) The reference in paragraph (2)(b) to the beginning of insolvency proceedings is to—

- (a) the presentation of a bankruptcy petition, or
- (b) the presentation of a petition for an administration order or a winding-up petition or the passing of a resolution for voluntary winding up, or
- (c) the appointment of an administrative receiver.

(4) The Department may make further provision by regulations modifying the law of insolvency in relation to the matters mentioned in paragraph (1).

(5) The regulations may add to, amend or repeal the provisions mentioned in paragraph (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

Proceedings of exchange or clearing house take precedence over insolvency procedures

82.—(1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy or winding up or in the administration of an insolvent estate—

- (a) a market contract,
- (b) the default rules of a recognised investment exchange or recognised clearing house,

(c) the rules of a recognised investment exchange or recognised clearing house as to the settlement of market contracts not dealt with under its default rules.

(2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the Insolvency Order shall not be exercised in such a way as to prevent or interfere with—

(a) the settlement in accordance with the rules of a recognised investment exchange or recognised clearing house of a market contract not dealt with under its default rules, or

(b) any action taken under the default rules of such an exchange or clearing house.

This does not prevent a relevant office-holder from afterwards seeking to recover any amount under Article 86(3) or 87(3) or prevent the court from afterwards making any such order as is mentioned in Article 88(1) (but subject to paragraphs (2) and (3) of that Article).

(3) Nothing in the following provisions of this Part shall be construed as affecting the generality of the above provisions.

(4) A debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or bankruptcy until the completion of the default proceedings.

A debt or other liability which by virtue of this paragraph may not be proved shall not be taken into account for the purposes of any set-off until the completion of the default proceedings.

(5) For the purposes of paragraph (4) the default proceedings shall be taken to be completed in relation to a person when a report is made under Article 85 stating the sum (if any) certified to be due to or from him.

Duty to give assistance for purposes of default proceedings

83.—(1) It is the duty of—

(a) any person who has or had control of any assets of a defaulter, and

(b) any person who has or had control of any documents of or relating to a defaulter,

to give a recognised investment exchange or recognised clearing house such assistance as it may reasonably require for the purposes of its default proceedings.

This applies notwithstanding any duty of that person under the statutory provisions relating to insolvency.

(2) A person shall not under this Article be required to provide any information or produce any document which he would be entitled to refuse to provide or produce on grounds of legal professional privilege in proceedings in the High Court.

(3) Where original documents are supplied in pursuance of this Article, the exchange or clearing house shall return them forthwith after the completion of the relevant default proceedings, and shall in the meantime allow reasonable access to them to the person by whom they were supplied and to any person who would be entitled to have access to them if they were still in the control of the person by whom they were supplied.

(4) The expenses of a relevant office-holder in giving assistance under this Article are recoverable as part of the expenses incurred by him in the discharge of his duties; and he shall not be required under this Article to take any action which involves expenses which cannot be so recovered, unless the exchange or clearing house undertakes to meet them.

There shall be treated as expenses of his such reasonable sums as he may determine in respect of time spent in giving the assistance.

(5) The Department may by regulations make further provision as to the duties of persons to give assistance to a recognised investment exchange or recognised clearing house for the purposes of its default proceedings.

(6) The Secretary of State may by regulations make further provision as to the duties of an exchange or clearing house with respect to information supplied to it.

(7) Regulations under this Article may add to, amend or repeal the provisions of paragraphs (1) to (4).

(8) In this Article “document” includes information recorded in any form.

Supplementary provisions as to default proceedings

84.—(1) If the court is satisfied on an application by a relevant office-holder that a party to a market contract with a defaulter intends to dissipate or apply his assets so as to prevent the office-holder recovering such sums as may become due upon the completion of the default proceedings, the court may grant such interlocutory relief as it thinks fit.

(2) A liquidator or trustee of a defaulter shall not—

- (a) declare or pay any dividend to the creditors, or
- (b) return any capital to contributories,

unless he has retained what he reasonably considers to be an adequate reserve in respect of any claims arising as a result of the default proceedings of the exchange or clearing house concerned.

(3) The court may on an application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the duties of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.

(4) Nothing in Article 23(1)(c), 24(3), 106, 108, 110 or 258 of the Insolvency Order (which restrict the taking of certain legal proceedings and other steps), shall affect any action taken by an exchange or clearing house for the purpose of its default proceedings.

Duty to report on completion of default proceedings

85.—(1) A recognised investment exchange or recognised clearing house shall, on the completion of proceedings under its default rules, report to the Secretary of State on its proceedings stating in respect of each creditor or debtor the sum certified by it to be payable from or to the defaulter or, as the case may be, the fact that no sum is payable.

(2) The exchange or clearing house may make a single report or may make reports from time to time as proceedings are completed with respect to the transactions affecting particular persons.

(3) The exchange or clearing house shall supply a copy of every report under this Article to the defaulter and to any relevant office-holder acting in relation to him or his estate.

(4) When a report under this Article is received by the Secretary of State he shall publish notice of that fact in such manner as he thinks appropriate for bringing it to the attention of creditors and debtors of the defaulter.

(5) An exchange or clearing house shall make available for inspection by a creditor or debtor of the defaulter so much of any report by it under this Article as relates to the sum (if any) certified to be due to or from him or to the method by which that sum was determined.

(6) Any such person may require the exchange or clearing house, on payment of such reasonable fee as the exchange or clearing house may determine, to provide him with a copy of any part of a report which he is entitled to inspect.

Net sum payable on completion of default proceedings

86.—(1) The following provisions apply with respect to the net sum certified by a recognised investment exchange or recognised clearing house, upon proceedings under its default rules being duly completed in accordance with this Part, to be payable by or to a defaulter.

(2) If a bankruptcy or winding-up order has been made, or a resolution for voluntary winding up has been passed, the debt—

- (a) is provable in the bankruptcy or winding up or, as the case may be, is payable to the relevant office-holder, and
- (b) shall be taken into account, where appropriate, under Article 296 of the Insolvency Order (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up,

in the same way as a debt due before the commencement of the bankruptcy, the date on which the body corporate goes into liquidation (within the meaning of Article 6 of the Insolvency Order) or, in the case of a partnership, the date of the winding-up order.

(3) However, where (or to the extent that) a sum is taken into account by virtue of paragraph (2) (b) which arises from a contract entered into at a time when the creditor had notice—

- (a) that a bankruptcy petition was pending, or
- (b) that a meeting of creditors had been summoned under Article 84 of the Insolvency Order or that a winding-up petition was pending,

the value of any profit to him arising from the sum being so taken into account (or being so taken into account to that extent) is recoverable from him by the relevant office-holder unless the court directs otherwise.

(4) Paragraph (3) does not apply in relation to a sum arising from a contract effected under the default rules of a recognised investment exchange or recognised clearing house.

(5) Any sum recoverable by virtue of paragraph (3) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential debts.

Disclaimer of property, rescission of contracts, &c.

87.—(1) Articles 152, 157, 288 and 318 of the Insolvency Order (power to disclaim onerous property and court's power to order rescission of contracts, &c.) do not apply in relation to—

- (a) a market contract, or
- (b) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to market contracts.

(2) Articles 107 and 257 of the Insolvency Order (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition) do not apply to—

- (a) a market contract, or any disposition of property in pursuance of such a contract,
- (b) the provision of margin in relation to market contracts,
- (c) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to a market contract, or any disposition of property in pursuance of such a contract, or
- (d) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.

(3) However, where—

- (a) a market contract is entered into by a person who has notice that a petition has been presented for the winding up or bankruptcy of the other party to the contract, or
- (b) margin in relation to a market contract is accepted by a person who has notice that such a petition has been presented in relation to the person by whom or on whose behalf the margin is provided,

the value of any profit to him arising from the contract or, as the case may be, the amount or value of the margin is recoverable from him by the relevant office-holder unless the court directs otherwise.

(4) Paragraph (3)(a) does not apply where the person entering into the contract is a recognised investment exchange or recognised clearing house acting in accordance with its rules, or where the contract is effected under the default rules of such an exchange or clearing house; but paragraph (3)(b) applies in relation to the provision of margin in relation to such a contract.

(5) Any sum recoverable by virtue of paragraph (3) ranks for priority, in the event of the involvency of the person from whom it is due, immediately before preferential debts.

Adjustment of prior transactions

88.—(1) No order shall be made in relation to a transaction to which this Article applies under—

- (a) Article 202 or 312 of the Insolvency Order (transactions at an undervalue),
- (b) Article 203 or 313 of that Order (preferences), or
- (c) Article 367 of that Order (transactions defrauding creditors).

(2) This Article applies to—

- (a) a market contract to which a recognised investment exchange or recognised clearing house is a party or which is entered into under its default rules, and
- (b) a disposition of property in pursuance of such a market contract.

(3) Where margin is provided in relation to a market contract and (by virtue of paragraph (2)(a) or otherwise) no such order as is mentioned in paragraph (1) has been, or could be, made in relation to that contract, this Article applies to—

- (a) the provision of the margin,
- (b) any contract effected by the exchange or clearing house in question for the purpose of realising the property provided as margin, and
- (c) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.

Powers of Secretary of State to give directions

89.—(1) The powers conferred by this Article are exercisable in relation to a recognised UK investment exchange or recognised UK clearing house.

(2) Where in any case an exchange or clearing house has not taken action under its default rules—3832/2—O.I.C.[Companies No. 2 (NI) Order 1990]

- (a) if it appears to the Secretary of State that it could take action, he may direct it to do so, and
- (b) if it appears to the Secretary of State that it is proposing to take or may take action, he may direct it not to do so.

(3) Before giving such a direction the Secretary of State shall consult the exchange or clearing house in question; and he shall not give a direction unless he is satisfied, in the light of that consultation—

- (a) in the case of a direction to take action, that failure to take action would involve undue risk to investors or other participants in the market, or
- (b) in the case of a direction not to take action, that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market.

(4) A direction shall specify the grounds on which it is given.

(5) A direction not to take action may be expressed to have effect until the giving of a further direction (which may be a direction to take action or simply revoking the earlier direction).

(6) No direction shall be given not to take action if, in relation to the person in question—

(a) a bankruptcy order has been made, or

(b) a winding up order has been made, a resolution for voluntary winding up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;

and any previous direction not to take action shall cease to have effect on the making or passing of any such order, appointment or resolution.

(7) Where an exchange or clearing house has taken or been directed to take action under its default rules, the Secretary of State may direct it to do or not to do such things (being things which it has power to do under its default rules) as are specified in the direction.

The Secretary of State shall not give such a direction unless he is satisfied that it will not impede or frustrate the proper and efficient conduct of the default proceedings.

(8) A direction under this Article is enforceable, on the application of the Secretary of State, by injunction; and where an exchange or clearing house has not complied with a direction, the court may make such order as it thinks fit for restoring the position to what it would have been if the direction had been complied with.

Application to determine whether default proceedings to be taken

90.—(1) Where there has been made or passed in relation to a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house—

(a) a bankruptcy order, or

(b) an administration or winding up order, a resolution for voluntary winding up or an order appointing a provisional liquidator,

and the exchange or clearing house has not taken action under its default rules in consequence of the order or resolution or the matters giving rise to it, a relevant office-holder appointed by, or in consequence of or in connection with, the order or resolution may apply to the Secretary of State.

(2) The application shall specify the exchange or clearing house concerned and the grounds on which it is made.

(3) On receipt of the application the Secretary of State shall notify the exchange or clearing house, and unless within three business days after the day on which the notice is received the exchange or clearing house—

(a) takes action under its default rules, or

(b) notifies the Secretary of State that it proposes to do so forthwith,

then, subject as follows, the provisions of Articles 81 to 88 do not apply in relation to market contracts to which the member or designated non-member in question is a party or to anything done by the exchange or clearing house for the purposes of, or in connection with, the settlement of any such contract.

For this purpose a “business day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971(16).

(4) The provisions of Articles 81 to 88 are not disapplied if before the end of the period mentioned in paragraph (3) the Secretary of State gives the exchange or clearing house a direction under Article 89(2)(a) (direction to take action under default rules).

No such direction may be given after the end of that period.

(5) If the exchange or clearing house notifies the Secretary of State that it proposes to take action under its default rules forthwith, it shall do so; and that duty is enforceable, on the application of the Secretary of State, by injunction.

Delegation of functions to designated agency

91.—(1) Section 114 of the Financial Services Act 1986⁽¹⁷⁾ (power to transfer functions to designated agency) applies to the functions of the Secretary of State under this Part in relation to a UK investment exchange or clearing house, with the exception of his functions with respect to the making of orders and regulations.

(2) If immediately before the coming into operation of this Article—

- (a) a designated agency is exercising all functions in relation to such bodies which are capable of being transferred under that section, and
- (b) no draft order is lying before Parliament resuming any of those functions,

the order bringing this Article into operation shall have effect as a delegation order made under that section transferring to that agency all the functions which may be transferred by virtue of this Article.

(3) The Secretary of State may—

- (a) in the circumstances mentioned in subsection (3), (4) or (5) of section 115 of the Financial Services Act 1986, or
- (b) if it appears to him that a designated agency is unable or unwilling to discharge all or any of the functions under this Part which have been transferred to it,

make an order under that section resuming all functions under this Part which have been transferred to the agency.

This does not affect his power to make an order under subsection (1) or (2) of that section with respect to such functions.

Other exchanges and clearing houses

Certain overseas exchanges and clearing houses

92.—(1) The Department may by regulations provide that this Part applies in relation to contracts connected with an overseas investment exchange or clearing house which is approved by the Secretary of State under section 170 of the Companies Act 1989⁽¹⁸⁾ (certain overseas exchanges and clearing houses), as it applies in relation to contracts connected with a recognised investment exchange or clearing house.

(2) The Department may make regulations which, in relation to a body which is so approved, provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Department to be necessary or expedient.

Certain money market institutions

93.—(1) The Department may by regulations provide that this Part applies to contracts to which Part VII of the Companies Act 1989⁽¹⁹⁾ applies by virtue of regulations made under section 171(1) of that Act (certain money market institutions), as it applies to contracts connected with a recognised investment exchange or recognised clearing house.

⁽¹⁷⁾ 1986 c. 60

⁽¹⁸⁾ 1989 c. 40

⁽¹⁹⁾ 1982 c. 41

(2) Regulations under this Article may, in relation to a person included in the list mentioned in the said section 171(1), provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Department to be necessary or expedient.

(3) Before making any regulations under this Article, the Department shall consult the Treasury and the Bank of England.

Settlement arrangements provided by the Bank of England

94.—(1) The Department may by regulations provide that this Part applies to contracts to which Part VII of the Companies Act 1989(20) applies by virtue of regulations made under section 172(1) of that Act (settlement arrangements provided by the Bank of England), as it applies to contracts connected with a recognised investment exchange or recognised clearing house.

(2) Regulations under this Article may provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Department to be necessary or expedient.

(3) Before making any regulations under this Article, the Department shall consult the Treasury and the Bank of England.

Market charges

Market charges

95.—(1) In this Part “market charge” means a charge, whether fixed or floating, granted—

- (a) in favour of a recognised investment exchange, for the purpose of securing debts or liabilities arising in connection with the settlement of market contracts,
- (b) in favour of a recognised clearing house, for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts, or
- (c) in favour of a person who agrees to make payments as a result of the transfer of specified securities made through the medium of a computer-based system established by the Bank of England and The Stock Exchange, for the purpose of securing debts or liabilities of the transferee arising in connection therewith.

(2) Where a charge is granted partly for purposes specified in paragraph (1)(a), (b) or (c) and partly for other purposes, it is a “market charge” so far as it has effect for the specified purposes.

(3) In paragraph (1)(c)—

“specified securities” means securities for the time being specified in the list in Schedule 1 to the Stock Transfer Act 1982(21), and includes any right to such securities; and

“transfer”, in relation to any such securities or right, means a transfer of the beneficial interest.

(4) The Department may by regulations make further provision as to the charges granted in favour of any such person as is mentioned in paragraph (1)(a), (b) or (c) which are to be treated as “market charges” for the purposes of this Part; and the regulations may add to, amend or repeal the provisions of paragraphs (1) to (3).

(5) The regulations may provide that a charge shall or shall not be treated as a market charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.

(6) Before making regulations under this Article in relation to charges granted in favour of a person within paragraph (1)(c), the Department shall consult the Treasury and the Bank of England.

(20) 1989 c. 40

(21) 1986 c. 60

Modifications of the law of insolvency

96.—(1) The general law of insolvency has effect in relation to market charges and action taken in enforcing them subject to the provisions of Article 97.

(2) The Department may by regulations make further provision modifying the law of insolvency in relation to the matters mentioned in paragraph (1).

(3) The regulations may add to, amend or repeal the provisions mentioned in paragraph (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect with such exceptions, additions or adaptations as are specified in the regulations.

(4) The regulations may make different provision for cases defined by reference to the nature of the charge, the nature of the property subject to it, the circumstances, nature or extent of the obligations secured by it or any other relevant factor.

(5) Before making regulations under this Article in relation to charges granted in favour of a person within Article 95(1)(c), the Department shall consult the Treasury and the Bank of England.

Administration orders, etc.

97.—(1) The following provisions of the Insolvency Order (which relate to administration orders and administrators) do not apply in relation to a market charge—

(a) Articles 23(1)(b) and 24(3)(c) (restriction on enforcement of security while petition for administration order pending or order in force), and

(b) Article 28(1) and (2) (power of administrator to deal with charged property);

and Article 24(2) of that Order (receiver to vacate office when so required by administrator) does not apply to a receiver appointed under a market charge.

(2) However, where a market charge falls to be enforced after an administration order has been made or a petition for an administration order has been presented, and there exists another charge over some or all of the same property ranking in priority to or *pari passu* with the market charge, the court may order that there shall be taken after enforcement of the market charge such steps as the court may direct for the purpose of ensuring that the chargee under the other charge is not prejudiced by the enforcement of the market charge.

(3) Article 53 of the Insolvency Order (power of administrative receiver to dispose of charged property) does not apply in relation to a market charge.

(4) Articles 107 and 257 of the Insolvency Order (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition) do not apply to a disposition of property as a result of which the property becomes subject to a market charge or any transaction pursuant to which that disposition is made.

(5) However, if a person (other than the chargee under the market charge) who is party to a disposition mentioned in paragraph (4) has notice at the time of the disposition that a petition has been presented for the winding up or bankruptcy of the party making the disposition, the value of any profit to him arising from the disposition is recoverable from him by the relevant office-holder unless the court directs otherwise.

(6) Any sum recoverable by virtue of paragraph (5) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential debts.

(7) In a case falling within both paragraph (4) (as a disposition of property as a result of which the property becomes subject to a market charge) and Article 87(2) (as the provision of margin in relation to a market contract), Article 87(3) applies with respect to the recovery of the amount or value of the margin and paragraph (5) does not apply.

Power to make provision about certain other charges

98.—(1) The Department may by regulations provide that the general law of insolvency has effect in relation to charges of such descriptions as may be specified in the regulations, and action taken in enforcing them, subject to such provisions as may be specified in the regulations.

(2) The regulations may specify any description of charge granted in favour of—

- (a) a body approved by the Secretary of State under section 170 of the Companies Act 1989⁽²²⁾ (certain overseas exchanges and clearing houses),
- (b) a person included in the list maintained by the Bank of England for the purposes of section 171 of that Act (certain money market institutions),
- (c) the Bank of England,
- (d) an authorised person within the meaning of the Financial Services Act 1986⁽²³⁾, or
- (e) an international securities self-regulating organisation within the meaning of that Act,

for the purpose of securing debts or liabilities arising in connection with or as a result of the settlement of contracts or the transfer of assets, rights or interests on a financial market.

(3) The regulations may specify any description of charge granted for that purpose in favour of any other person in connection with exchange facilities or clearing services provided by a recognised investment exchange or recognised clearing house or by any such body, person, authority or organisation as is mentioned in paragraph (2).

(4) Where a charge is granted partly for the purpose specified in paragraph (2) and partly for other purposes, the power conferred by this Article is exercisable in relation to the charge so far as it has effect for that purpose.

(5) The regulations may—

- (a) make the same or similar provision in relation to the charges to which they apply as is made by or under Articles 96 and 97 in relation to market charges, or
- (b) apply any of those provisions with such exceptions, additions or adaptations as are specified in the regulations.

(6) Before making regulations under this Article relating to a description of charges defined by reference to their being granted—

- (a) in favour of a person included in the list maintained by the Bank of England for the purposes of section 171 of the Companies Act 1989⁽²⁴⁾, or in connection with exchange facilities or clearing services provided by a person included in that list, or
- (b) in favour of the Bank of England, or in connection with settlement arrangements provided by the Bank,

the Department shall consult the Treasury and the Bank of England.

(7) Regulations under this Article may provide that they apply or do not apply to a charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.

⁽²²⁾ 1989 c. 40

⁽²³⁾ 1986 c. 45

⁽²⁴⁾ 1982 c. 27

Market property

Application of margin not affected by certain other interests

99.—(1) The following provisions have effect with respect to the application by a recognised investment exchange or recognised clearing house of property (other than land) held by the exchange or clearing house as margin in relation to a market contract.

(2) So far as necessary to enable the property to be applied in accordance with the rules of the exchange or clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the exchange or clearing house had notice of the interest, right or breach of duty at the time the property was provided as margin.

(3) No right or remedy arising subsequently to the property being provided as margin may be enforced so as to prevent or interfere with the application of the property by the exchange or clearing house in accordance with its rules.

(4) Where an exchange or clearing house has power by virtue of the above provisions to apply property notwithstanding an interest, right or remedy, a person to whom the exchange or clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

Priority of floating market charge over subsequent charges

100.—(1) The Department may by regulations provide that a market charge which is a floating charge has priority over a charge subsequently created or arising, including a fixed charge.

(2) The regulations may make different provision for cases defined, as regards the market charge or the subsequent charge, by reference to the description of charge, its terms, the circumstances in which it is created or arises, the nature of the charge, the person in favour of whom it is granted or arises or any other relevant factor.

Priority of market charge over unpaid vendor's lien

101. Where property subject to an unpaid vendor's lien becomes subject to a market charge, the charge has priority over the lien unless the chargee had actual notice of the lien at the time the property became subject to the charge.

Proceedings against market property by unsecured creditors

102.—(1) Where property (other than land) is held by a recognised investment exchange or recognised clearing house as margin in relation to market contracts or is subject to a market charge, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of—

- (a) in the case of property provided as cover for margin, the investment exchange or clearing house in question, or
- (b) in the case of property subject to a market charge, the person in whose favour the charge was granted.

(2) Where consent is given the proceedings may be commenced or continued notwithstanding any provision of the Insolvency Order.

(3) Where by virtue of this Article a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

Power to apply provisions to other cases

103.—(1) The power of the Department to make provision by regulations under—

- (a) Article 92, 93 or 94 (power to extend provisions relating to market contracts), or
- (b) Article 98 (power to extend provisions relating to market charges),

includes power to apply Articles 99 to 102 to any description of property provided as cover for margin in relation to contracts in relation to which the power is exercised or, as the case may be, property subject to charges in relation to which the power is exercised.

(2) The regulations may provide that those Articles apply with such exceptions, additions and adaptations as may be specified in the regulations.

Supplementary provisions

Insolvency proceedings in other jurisdictions

104.—(1) The references to insolvency law in section 426 of the Insolvency Act 1986⁽²⁵⁾ (co-operation with courts exercising insolvency jurisdiction in other jurisdictions) include, in relation to a part of the United Kingdom, the provisions made by or under this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to any provisions made by or under this Part.

(2) A court shall not, in pursuance of that section or any other statutory provision or rule of law, recognise or give effect to—

- (a) any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom, or
- (b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,

in so far as the making of the order or the doing of the act would be prohibited in the case of a court in Northern Ireland or a relevant office-holder by provisions made by or under this Part.

(3) Paragraph (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the Civil Jurisdiction and Judgments Act 1982⁽²⁶⁾.

Indemnity for certain acts, &c.

105.—(1) Where a relevant office-holder takes any action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognised investment exchange or recognised clearing house, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by the office-holder's own negligence.

(2) Any failure by a recognised investment exchange or recognised clearing house to comply with its own rules in respect of any matter shall not prevent that matter being treated for the purposes of this Part as done in accordance with those rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the rules.

(3) No recognised investment exchange or recognised clearing house, nor any officer or servant or member of the governing body of a recognised investment exchange or recognised clearing house, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this paragraph applies unless the act or omission is shown to have been in bad faith.

⁽²⁵⁾ 1989 c. 40

⁽²⁶⁾ 1946 c. 36

(4) The functions to which paragraph (3) applies are the functions of the exchange or clearing house so far as relating to, or to matters arising out of—

- (a) its default rules, or
- (b) any obligations to which it is subject by virtue of this Part.

(5) No person exercising any functions by virtue of arrangements made pursuant to paragraph 5 or 12 of Schedule 21 to the Companies Act 1989⁽²⁷⁾ (delegation of functions in connection with default procedures), nor any officer or servant of such a person, shall be liable in damages for anything done or omitted in the discharge or purported discharge of those functions unless the act or omission is shown to have been in bad faith.

Power to make further provision by regulations

106.—(1) The Department may by regulations make such further provision as appears to it necessary or expedient for the purposes of this Part and, in particular but without prejudice to the generality of the foregoing, for integrating the provisions of this Part with the general law of insolvency.

(2) The Secretary of State may by regulations make such further provision as appears to him necessary or expedient for the purposes of this Part.

(3) Regulations under this Article may add to, amend or repeal any of the provisions of this Part or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

Supplementary provisions as to regulations

107.—(1) Regulations under this Part may contain such incidental, transitional and other supplementary provisions as appear to the Department, or as the case may be, to the Secretary of State to be necessary or expedient.

(2) Regulations made by the Department under this Part shall be subject to negative resolution.

(3) Regulations made by the Secretary of State under this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946⁽²⁸⁾ shall apply accordingly.

Construction of references to parties to market contracts

108.—(1) Where a person enters into market contracts in more than one capacity, the provisions of this Part apply (subject as follows) as if the contracts entered into in each different capacity were entered into by different persons.

(2) References in this Part to a market contract to which a person is a party include (subject as follows, and unless the context otherwise requires) contracts to which he is party as agent.

(3) The Secretary of State may by regulations—

- (a) modify or exclude the operation of paragraphs (1) and (2), and
- (b) make provision as to the circumstances in which a person is to be regarded for the purposes of those provisions as acting in different capacities.

(27) 1986 c. 60

(28) 1986 c. 53

Meaning of “default rules” and related expressions

109.—(1) In this Part “default rules” means rules of a recognised investment exchange or recognised clearing house which provide for the taking of action in the event of a person appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.

(2) References in this Part to a “defaulter” are to a person in respect of whom action has been taken by a recognised investment exchange or recognised clearing house under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to “default” shall be construed accordingly.

(3) In this Part “default proceedings” means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.

(4) If an exchange or clearing house takes action under its default rules in respect of a person, all subsequent proceedings under its rules for the purposes of or in connection with the settlement of market contracts to which the defaulter is a party shall be treated as done under its default rules.

Meaning of “relevant office-holder”

110.—(1) The following are relevant office-holders for the purposes of this Part—

- (a) the official receiver,
- (b) any person acting in relation to a company as its liquidator, provisional liquidator, administrator or administrative receiver,
- (c) any person acting in relation to an individual as his trustee in bankruptcy,
- (d) any person acting as administrator of an insolvent estate of a deceased person.

(2) In paragraph (1)(b) “company” means any company, society, association, partnership or other body which may be wound up under the Insolvency Order.

Minor definitions

111.—(1) In this Part—

“administrative receiver” has the meaning given by Article 5(1) of the Insolvency Order;

“charge” means any form of security, including a mortgage;

“clearing house” has the same meaning as in the Financial Services Act 1986⁽²⁹⁾;

“investment” and “investment exchange” have the same meaning as in the Financial Services Act 1986;

“overseas”, in relation to an investment exchange or clearing house, means having its head office outside the United Kingdom;

“recognised” means recognised under the Financial Services Act 1986⁽³⁰⁾;

“The Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

“UK”, in relation to an investment exchange or clearing house, means having its head office in the United Kingdom.

(2) References in this Part to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(3) In this Part the expressions “margin” and “cover for margin” have the same meaning.

⁽²⁹⁾ 1907 c. 24

⁽³⁰⁾ 1907 c. 24

(4) References in this Part to ensuring the performance of a transaction have the same meaning as in the Financial Services Act 1986.

(5) For the purposes of this Part a person shall be taken to have notice of a matter if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

This does not apply for the purposes of a provision requiring “actual notice”.

(6) References in this Part to the law of insolvency include references to every provision made by or under the Insolvency Order, and in relation to a building society references to insolvency law or to any provision of the Insolvency Order are to that law or provision as modified by the Building Societies Act 1986(31).

Index of defined expressions

112. 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 Article or paragraph)—

administrative receiver	Article 111(1)
charge	Article 111(1)
clearing house	Article 111(1)
cover for margin	Article 111(3)
default rules (and related expressions)	Article 109
designated non-member	Article 80(2)
ensuring the performance of a transaction	Article 111(4)
insolvency law (and similar expressions)	Article 111(6)
investment	Article 111(1)
investment exchange	Article 111(1)
margin	Article 111(3)
market charge	Article 95
market contract	Article 80
notice	Article 111(5)
overseas (in relation to an investment exchange or clearing house)	Article 111(1)
party (in relation to a market contract)	Article 108
recognised	Article 111(1)
relevant office-holder	Article 110
settlement and related expressions (in relation to a market contract)	Article 111(2)
The Stock Exchange	Article 111(1)

UK (in relation to an investment exchange or clearing house) Article 111(1)

PART VI
REPEALS

Repeals

113. The statutory provisions set out in Schedule 6 are hereby repealed to the extent specified in column 3 of that Schedule.

G. I. de Deney
Clerk of the Privy Council