

---

STATUTORY INSTRUMENTS

---

**2005 No. 1967**

**The Companies (Audit, Investigations and  
Community Enterprise) (Northern Ireland) Order 2005**

**PART III**

**COMMUNITY INTEREST COMPANIES**

*Introductory*

**Community interest companies**

- 25.**—(1) There is to be a new type of company to be known as the community interest company.
- (2) In accordance with this Part—
- (a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and
  - (b) a company limited by guarantee and having a share capital may become a community interest company.
- (3) A community interest company established for charitable purposes is to be treated as not being so established and accordingly is not a charity.

**Regulator**

- 26.**—(1) There is to be an officer known as the Regulator of Community Interest Companies for Northern Ireland (referred to in this Part as “the Regulator”).
- (2) The Department must appoint a person to be the Regulator.
- (3) The Regulator has such functions relating to community interest companies as are conferred or imposed by or under this Order or any other statutory provision.
- (4) The Regulator must adopt an approach to the discharge of those functions which is based on good regulatory practice, that is an approach adopted having regard to—
- (a) the likely impact on those who may be affected by the discharge of those functions,
  - (b) the outcome of consultations with, and with organisations representing, community interest companies and others with relevant experience, and
  - (c) the desirability of using the Regulator’s resources in the most efficient and economic way.
- (5) The Regulator may issue guidance, or otherwise provide assistance, about any matter relating to community interest companies.
- (6) The Department may require the Regulator to issue guidance or otherwise provide assistance about any matter relating to community interest companies which is specified by the Department.
- (7) Any guidance issued under this Article must be such that it is readily accessible to, and capable of being easily understood by, those at whom it is aimed; and any other assistance provided

under this Article must be provided in the manner which the Regulator considers is most likely to be helpful to those to whom it is provided.

(8) Schedule 4 (further provisions about the Regulator) has effect.

### **Appeal Officer**

**27.**—(1) There is to be an officer known as the Appeal Officer for Community Interest Companies for Northern Ireland (referred to in this Part as “the Appeal Officer”).

(2) The Department must appoint a person to be the Appeal Officer.

(3) The Appeal Officer has the function of determining appeals against decisions and orders of the Regulator which under this Order or any other statutory provision lie to the Appeal Officer.

(4) An appeal to the Appeal Officer against a decision or order of the Regulator may be brought on the ground that the Regulator made a material error of law or fact.

(5) On such an appeal the Appeal Officer must—

(a) dismiss the appeal,

(b) allow the appeal, or

(c) remit the case to the Regulator.

(6) Where a case is remitted the Regulator must reconsider it in accordance with any rulings of law and findings of fact made by the Appeal Officer.

(7) Schedule 5 (further provisions about the Appeal Officer) has effect.

### **Official Property Holder**

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

(2) The Regulator must appoint a member of the Regulator’s staff to be the Official Property Holder.

(3) The Official Property Holder has such functions relating to property of community interest companies as are conferred or imposed by or under this Order or any other statutory provision.

(4) Schedule 6 (further provisions about the Official Property Holder) has effect.

### *Requirements*

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

**29.**—(1) Community interest companies must not distribute assets to their members unless regulations make provision authorising them to do so.

(2) If regulations authorise community interest companies to distribute assets to their members, the regulations may impose limits on the extent to which they may do so.

(3) Regulations may impose limits on the payment of interest on debentures issued by, or debts of, community interest companies.

(4) Regulations under this Article may make provision for limits to be set by the Regulator.

(5) The Regulator—

(a) may set a limit by reference to a rate determined by any other person (as it has effect from time to time), and

(b) may set different limits for different descriptions of community interest companies.

- (6) The Regulator must (in accordance with Article 26)—
  - (a) undertake appropriate consultation before setting a limit, and
  - (b) in setting a limit, have regard to its likely impact on community interest companies.
- (7) Regulations under this Article may include power for the Department to require the Regulator to review a limit or limits.
- (8) Where the Regulator sets a limit he must publish notice of it in the Belfast Gazette.

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

**30.**—(1) Regulations may make provision for and in connection with the distribution, on the winding up of a community interest company, of any assets of the company which remain after satisfaction of the company's liabilities.

- (2) The regulations may, in particular, amend or modify the operation of any statutory provision.

### **Memorandum and articles**

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

(2) Article 18(1) of the 1986 Order (articles) applies in relation to a community interest company limited by shares as if it were a company limited by guarantee (so that articles must be registered).

(3) The memorandum and articles of a community interest company of any description—

- (a) must at all times include such provisions as regulations require to be included in the memorandum and articles of every community interest company or a community interest company of that description, and
- (b) must not include such provisions as regulations require not to be so included.

(4) The provisions required by regulations under paragraph (3)(a) to be included in the memorandum or articles of a community interest company may (in particular) include—

- (a) provisions about the transfer and distribution of the company's assets (including their distribution on a winding up),
- (b) provisions about the payment of interest on debentures issued by the company or debts of the company,
- (c) provisions about membership of the company,
- (d) provisions about the voting rights of members of the company,
- (e) provisions about the appointment and removal of directors of the company, and
- (f) provisions about voting at meetings of directors of the company.

(5) The memorandum and articles of a community interest company are of no effect to the extent that they—

- (a) are inconsistent with provisions required to be included in the memorandum or articles of the company by regulations under paragraph (3)(a), or
- (b) include provisions required not to be included by regulations under paragraph (3)(b).

(6) Regulations may make provision for and in connection with restricting the ability of a community interest company under Article 15 of the 1986 Order to alter its memorandum with respect to the statement of its objects.

## **Names**

**32.**—(1) The name of a community interest company which is not a public company must end with—

- (a) “community interest company”, or
- (b) “c.i.c.”.

(2) The name of a community interest company which is a public company must end with—

- (a) “community interest public limited company”, or
- (b) “community interest p.l.c.”.

(3) Article 35 of the 1986 Order (company name to end with “public limited company” or “limited”) does not apply to community interest companies.

(4) Schedule 7 (further provisions about names) has effect.

## **Community interest company reports**

**33.**—(1) The directors of a community interest company must prepare in respect of each financial year a report about the company’s activities during the financial year (a “community interest company report”).

(2) Article 250(1) of the 1986 Order is to be treated as requiring the directors of a community interest company to deliver to the registrar of companies a copy of the community interest company report.

(3) Regulations—

- (a) must make provision requiring community interest company reports to include information about the remuneration of directors,
- (b) may make provision as to the form of, and other information to be included in, community interest company reports, and
- (c) may apply provisions of the 1986 Order relating to directors' reports to community interest company reports (with any appropriate modifications).

(4) The registrar of companies must forward to the Regulator a copy of each community interest company report delivered to the registrar under this Article.

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

**34.**—(1) This Article has effect for the purposes of this Part.

(2) A company satisfies the community interest test if a reasonable person might consider that its activities are being carried on for the benefit of the community.

(3) An object stated in the memorandum of a company is a community interest object of the company if a reasonable person might consider that the carrying on of activities by the company in furtherance of the object is for the benefit of the community.

(4) Regulations may provide that activities of a description prescribed by the regulations are to be treated as being, or as not being, activities which a reasonable person might consider are activities carried on for the benefit of the community.

(5) “Community” includes a section of the community (whether in Northern Ireland or anywhere else); and regulations may make provision about what does, does not or may constitute a section of the community.

(6) A company is an excluded company if it is a company of a description prescribed by regulations.

### *Becoming a community interest company*

#### **New companies**

**35.**—(1) If a company is to be formed as a community interest company, the documents delivered to the registrar of companies under Article 21 of the 1986 Order (memorandum, articles and statement of names and particulars of directors and secretary) must be accompanied by the prescribed formation documents.

(2) “The prescribed formation documents” means such statutory declarations or other declarations or statements as are required by regulations to accompany the documents delivered under that Article, in such form as may be approved in accordance with the regulations.

(3) On receiving the documents delivered under that Article and the prescribed formation documents the registrar of companies must (instead of registering the memorandum and articles)—

- (a) forward a copy of each of the documents to the Regulator, and
- (b) retain the documents pending the Regulator’s decision.

(4) The Regulator must decide whether the company is eligible to be formed as a community interest company.

(5) A company is eligible to be formed as a community interest company if—

- (a) the memorandum and articles comply with the requirements imposed by and under Article 31 and the company’s name complies with Article 32, and
- (b) the Regulator, having regard to the documents delivered under Article 21 of the 1986 Order, the prescribed formation documents and any other relevant considerations, considers that the company will satisfy the community interest test and is not an excluded company.

(6) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).

(7) If the Regulator gives notice of a decision that the company is eligible to be formed as a community interest company, Article 23 of the 1986 Order (registration of memorandum and articles) applies; and if the registrar registers the memorandum and articles he must also retain and record the prescribed formation documents.

(8) The certificate of incorporation under Article 24 of the 1986 Order (effect of registration) is to contain a statement that the company is a community interest company.

(9) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.

(10) If the Regulator decides that the company is not eligible to be formed as a community interest company, any subscriber to the memorandum may appeal to the Appeal Officer against the decision.

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

**36.**—(1) If a company is to become a community interest company, the company must by special resolutions under the 1986 Order—

- (a) alter its memorandum to state that it is to be a community interest company,
- (b) make such alterations of its memorandum and articles as it considers necessary to comply with requirements imposed by and under Article 31 or otherwise appropriate in connection with becoming a community interest company, and
- (c) change its name to comply with Article 32.

(2) Article 388(1) of the 1986 Order (forwarding of copies of special resolutions to registrar of companies) must be complied with in relation to each of the special resolutions at the same time.

(3) If the special resolutions include one under Article 15 or 28 of the 1986 Order (alterations of memorandum)—

- (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
- (b) Article 388(1) has effect in relation to them as if it referred to 15 days after the relevant date.

(4) If an application is made under Article 16 of the 1986 Order (objection to alteration of memorandum under Article 15 or 28), the relevant date is—

- (a) the date on which the court determines the application (or, if there is more than one application, the date on which the last to be determined by the court is determined), or
- (b) such later date as the court may order.

(5) If there is no application under Article 16 of that Order, the relevant date is the end of the period for making such an application.

(6) The copies of the special resolutions forwarded to the registrar of companies must be accompanied by—

- (a) a copy of the memorandum and articles of the company as altered by the special resolutions, and
- (b) the prescribed conversion documents.

(7) “The prescribed conversion documents” means such statutory declarations or other declarations or statements as are required by regulations to accompany the copies of the special resolutions, in such form as may be approved in accordance with the regulations.

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

**37.**—(1) On receiving under Article 36 the copies of the special resolutions, the memorandum and articles as altered by the special resolutions and the prescribed conversion documents, the registrar of companies must (instead of recording the special resolutions and entering a new name on the register)—

- (a) forward a copy of each of the documents to the Regulator, and
- (b) retain the documents pending the Regulator’s decision.

(2) The alterations of the memorandum and articles made by the special resolutions are to take effect only as provided by this Article.

(3) The Regulator must decide whether the company is eligible to become a community interest company.

(4) A company is eligible to become a community interest company if—

- (a) the memorandum and articles as altered by the special resolutions comply with the requirements imposed by and under Article 31 and the company’s name as so altered complies with Article 32, and
- (b) the Regulator, having regard to the special resolutions, the memorandum and articles as altered, the prescribed conversion documents and any other relevant considerations, considers that the company will satisfy the community interest test and is not an excluded company.

(5) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).

(6) If the Regulator gives notice of a decision that the company is eligible to become a community interest company, Article 38(6) of the 1986 Order (registration of new name) applies; and if the registrar of companies enters the new name of the company on the register the registrar must also retain and record the special resolutions and the prescribed conversion documents.

(7) On the special resolutions being recorded, the alterations to the company's articles and memorandum made by the special resolutions take effect.

(8) The certificate of incorporation under Article 38(6) of the 1986 Order is to contain a statement that the company is a community interest company.

(9) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.

(10) If the Regulator decides that the company is not eligible to become a community interest company, the company may appeal to the Appeal Officer against the decision.

### **Existing companies: charities**

**38.**—(1) A charitable company may not become a community interest company.

(2) If a charitable company purports by special resolution to change its name to comply with Article 32, the Commissioners of Her Majesty's Revenue and Customs may apply to the High Court for an order quashing any altered certificate of incorporation issued under Article 38(6) of the 1986 Order.

### *Supervision by Regulator*

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

**39.**—(1) In deciding whether and how to exercise the powers conferred by Articles 40 to 49 the Regulator must adopt an approach which is based on the principle that those powers should be exercised only to the extent necessary to maintain confidence in community interest companies.

(2) No power conferred on the Regulator by—

- (a) Article 43 (appointment of director),
- (b) Article 44 (removal of director),
- (c) Article 45 (appointment of manager), or
- (d) Article 46 (property),

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

(3) The company default condition is satisfied in relation to a power and a company if it appears to the Regulator necessary to exercise the power in relation to the company because—

- (a) there has been misconduct or mismanagement in the administration of the company,
- (b) there is a need to protect the company's property or to secure the proper application of that property,
- (c) the company is not satisfying the community interest test, or
- (d) if the company has community interest objects, the company is not carrying on any activities in pursuit of those objects.

(4) The power conferred on the Regulator by Article 47 (transfer of shares etc.) is not exercisable in relation to a community interest company unless it appears to the Regulator that the company is an excluded company.

## Investigation

**40.**—(1) The Regulator may—

- (a) investigate the affairs of a community interest company, or
- (b) appoint any person (other than a member of the Regulator’s staff) to investigate the affairs of a community interest company on behalf of the Regulator.

(2) Paragraph (1)(b) is in addition to paragraph 4 of Schedule 4 (powers of Regulator exercisable by authorised members of staff) and does not affect the application of that paragraph to the Regulator’s power under paragraph (1)(a).

(3) Schedule 8 (further provision about investigations under this Article) has effect.

## Audit

**41.**—(1) The Regulator may by order require a community interest company to allow the annual accounts of the company to be audited by a qualified auditor appointed by the Regulator.

(2) A person is a qualified auditor if he is eligible for appointment as a company auditor under Article 28 of the [Companies \(Northern Ireland\) Order 1990 \(NI 5\)](#) (eligibility for appointment as auditor).

(3) Articles 397A and 397B of the 1986 Order (auditor’s rights to information) apply in relation to an auditor appointed under this Article as in relation to an auditor appointed under Chapter V of Part XII of that Order.

(4) On completion of the audit the auditor must make a report to the Regulator on such matters and in such form as the Regulator specifies.

(5) The expenses of the audit, including the remuneration of the auditor, are to be paid by the Regulator.

(6) An audit under this Article is in addition to, and does not affect, any audit required by or under any other statutory provision.

## Civil proceedings

**42.**—(1) The Regulator may bring civil proceedings in the name and on behalf of a community interest company.

(2) Before instituting proceedings under this Article the Regulator must give written notice to the company stating—

- (a) the cause of action,
- (b) the remedy sought, and
- (c) a summary of the facts on which the proceedings are to be based.

(3) Any director of the company may apply to the court for an order—

- (a) that proposed proceedings are not to be instituted under this Article, or
- (b) that proceedings instituted under this Article are to be discontinued.

(4) On an application under paragraph (3) the court may make such order as it thinks fit.

(5) In particular the court may (as an alternative to ordering that proposed proceedings are not to be instituted under this Article or that proceedings instituted under this Article are to be discontinued) order—

- (a) that the proposed proceedings may be instituted under this Article, or the proceedings instituted under this Article may be continued, on such terms and conditions as the court thinks fit,



- (b) that any proceedings instituted by the company are to be discontinued, or
  - (c) that any proceedings instituted by the company may be continued on such terms and conditions as the court thinks fit.
- (6) The Regulator must indemnify the company against any costs incurred by it in connection with proceedings brought under this Article.
- (7) Any costs—
- (a) awarded to the company in connection with proceedings brought under this Article, or
  - (b) incurred by the company in connection with the proceedings and which it is agreed should be paid by a defendant,
- are to be paid to the Regulator.

### **Appointment of director**

- 43.**—(1) The Regulator may by order appoint a director of a community interest company.
- (2) The person appointed may be anyone whom the Regulator thinks appropriate, other than a member of the Regulator's staff.
- (3) A person may be appointed as a director of a company under this Article—
- (a) whether or not the person is a member of the company, and
  - (b) irrespective of any provision made by the memorandum or articles of the company or a resolution of the company in general meeting.
- (4) An order appointing a person to be a director of a company under this Article must specify the terms on which the director is to hold office; and those terms have effect as if contained in a contract between the director and the company.
- (5) The terms specified must include the period for which the director is to hold office, and may include terms as to the remuneration of the director by the company.
- (6) A director appointed under this Article has all the powers of the directors appointed by the company (including powers exercisable only by a particular director or class of directors).
- (7) A director appointed under this Article may not be removed by the company, but may be removed by the Regulator at any time.
- (8) Where—
- (a) a person is appointed to be a director of the company under this Article, or
  - (b) a person so appointed ceases to be a director of the company,
- the obligation which would otherwise be imposed on the company under Article 296(2) of the 1986 Order (requirement that company notify change among directors to registrar) is instead an obligation of the Regulator.
- (9) But if paragraph (10) applies, Article 296(2) applies as if the period within which the Regulator must send a notification to the registrar of companies is 14 days from the date on which the Regulator receives notification under that paragraph.
- (10) Where a person appointed to be a director of the company under this Article ceases to be a director of the company (otherwise than by removal under paragraph (7)), the company must give notification of that fact to the Regulator in a form approved by the Regulator before the end of the period of 14 days beginning with the date on which the person ceases to be a director.
- (11) If the company fails to comply with paragraph (10) it commits an offence.
- (12) A person guilty of an offence under paragraph (11) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(13) The company may appeal to the Appeal Officer against an order under this Article.

### **Removal of director**

**44.**—(1) The Regulator may by order remove a director of a community interest company.

(2) If a person has been removed under paragraph (1)—

- (a) the company may not subsequently appoint him a director of the company, and
- (b) any assignment to the person of the office of director of the company is of no effect (even if approved by special resolution of the company).

(3) The Regulator may by order suspend a director of the company pending a decision whether to remove him.

(4) The maximum period for which a director may be suspended under paragraph (3) is one year.

(5) If the Regulator suspends a director under paragraph (3) the Regulator may give directions in relation to the performance of the director's functions.

(6) The Regulator may discharge an order made under paragraph (1).

(7) The discharge of an order made under paragraph (1) does not reinstate the person removed by the order as a director of the company, but on the discharge of the order paragraph (2) ceases to apply to the person.

(8) The Regulator must from time to time review any order made under paragraph (3) and, if it is appropriate to do so, discharge the order.

(9) Before making an order under paragraph (1) or (3) in relation to a director, the Regulator must give at least 14 days' notice to—

- (a) the director, and
- (b) the company.

(10) Where an order is made in relation to a director under paragraph (1) or (3) the director may appeal against the order to the High Court.

(11) The Regulator must, before the end of the period of 14 days beginning with the date on which—

- (a) an order under paragraph (1) is made or discharged,
- (b) an order under paragraph (3) is made or discharged or expires, or
- (c) an order under paragraph (1) or (3) is quashed on appeal,

give notification of that event to the registrar of companies in a form approved by the registrar of companies.

(12) Where paragraph (11) imposes an obligation to notify the registrar of companies of an event, Article 296(2) of the 1986 Order (requirement that company notify change among directors to registrar) does not apply in respect of the event.

### **Appointment of manager**

**45.**—(1) The Regulator may by order appoint a manager in respect of the property and affairs of a community interest company.

(2) The person appointed may be anyone whom the Regulator thinks appropriate, other than a member of the Regulator's staff.

(3) An order under paragraph (1) may make provision as to the functions to be exercised by, and the powers of, the manager.

(4) The order may in particular provide—

- (a) for the manager to have such of the functions of the company's directors as are specified in the order, and
  - (b) for the company's directors to be prevented from exercising any of those functions.
- (5) In carrying out his functions the manager acts as the company's agent; and a person dealing with the manager in good faith and for value need not inquire whether the manager is acting within his powers.
- (6) The appointment of the manager does not affect—
- (a) any right of any person to appoint a receiver or manager of the company's property (including any right under Article 42 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#)), or
  - (b) the rights of a receiver or manager appointed by a person other than the Regulator.
- (7) The manager's functions are to be discharged by him under the supervision of the Regulator; and the Regulator must from time to time review the order by which the manager is appointed and, if it is appropriate to do so, discharge it in whole or in part.
- (8) In particular, the Regulator must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the company.
- (9) The Regulator may apply to the court for directions in relation to any matter arising in connection with the manager's functions or powers.
- (10) On an application under paragraph (9) the court may give such directions or make such orders as it thinks fit.
- (11) The costs of any application under paragraph (9) are to be paid by the company.
- (12) Regulations may authorise the Regulator—
- (a) to require a manager to make reports,
  - (b) to require a manager to give security for the due exercise of the manager's functions, and
  - (c) to remove a manager in circumstances prescribed by the regulations.
- (13) Regulations may—
- (a) provide for a manager's remuneration to be payable from the property of the company, and
  - (b) authorise the Regulator to determine the amount of a manager's remuneration and to disallow any amount of remuneration in circumstances prescribed by the regulations.
- (14) The company may appeal to the Appeal Officer against an order under this Article.

## **Property**

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

(a) the transactions which may be entered into by a community interest company, or  
 (b) the nature or amount of the payments that a community interest company may make,  
 and the order may in particular provide that transactions may not be entered into or payments made without the Regulator's consent.

(4) The vesting or transfer of property under paragraph (1) does not constitute a breach of a covenant or condition against alienation, and no right listed in paragraph (5) operates or becomes exercisable as a result of the vesting or transfer.

(5) The rights are—

- (a) a right of reverter,
- (b) a right of pre-emption,
- (c) a right of forfeiture,
- (d) a right of re-entry,
- (e) an option, and
- (f) any right similar to those listed in sub-paragraphs (a) to (e).

(6) The Regulator must from time to time review any order under this Article and, if it is appropriate to do so, discharge the order in whole or in part.

(7) On discharging an order under paragraph (1) the Regulator may make any order as to the vesting or transfer of the property, and give any directions, which he considers appropriate.

(8) If a person fails to comply with an order under paragraph (1)(b), the Regulator may certify that fact in writing to the court.

(9) If, after hearing—

- (a) any witnesses who may be produced against or on behalf of the alleged offender, and
- (b) any statement which may be offered in defence,

the court is satisfied that the offender failed without reasonable excuse to comply with the order, it may deal with him as if he had been guilty of contempt of the court.

(10) A person who contravenes an order under paragraph (2) or (3) commits an offence, but a prosecution may be instituted only with the consent of the Regulator or the Director of Public Prosecutions for Northern Ireland.

(11) A person guilty of an offence under paragraph (10) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) Paragraphs (8) to (10) do not prevent the bringing of civil proceedings in respect of a contravention of an order under paragraph (1)(b), (2) or (3).

(13) The company and any person to whom the order is directed may appeal to the Appeal Officer against an order under paragraph (1) or (2).

(14) The company may appeal to the Appeal Officer against an order under paragraph (3).

### **Transfer of shares etc.**

**47.—**(1) If a community interest company has a share capital, the Regulator may by order transfer specified shares in the company to specified persons.

(2) If a community interest company is a company limited by guarantee, the Regulator may by order—

- (a) extinguish the interests in the company of specified members of the company (otherwise than as shareholders), and
- (b) appoint a new member in place of each member whose interest has been extinguished.

- (3) An order under paragraph (1) may not transfer any shares in respect of which—
  - (a) a dividend may be paid, or
  - (b) a distribution of the company's assets may be made if the company is wound up.
- (4) An order under this Article in relation to a company—
  - (a) may only transfer shares to, and appoint as new members, persons who have consented to the transfer or appointment, and
  - (b) may be made irrespective of any provision made by the memorandum or articles of the company or a resolution of the company in general meeting.
- (5) The company and any person from whom shares are transferred by the order may appeal to the Appeal Officer against an order under paragraph (1).
- (6) The company and any person whose interest is extinguished by the order may appeal to the Appeal Officer against an order under paragraph (2).
- (7) "Specified", in relation to an order, means specified in the order.

#### **Petition for winding up**

**48.**—(1) The Regulator may present a petition for a community interest company to be wound up if the court is of the opinion that it is just and equitable that the company should be wound up.

(2) Paragraph (1) does not apply if the company is already being wound up by the court.

(3) In Article 104 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (application for winding up), after paragraph (5) insert—

“(5A) A winding-up petition may be presented by the Regulator of Community Interest Companies for Northern Ireland in a case falling within Article 48 of the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.”.

#### **Dissolution and striking off**

**49.**—(1) If a community interest company has been dissolved, the Regulator may apply under Article 602 of the 1986 Order for an order declaring the dissolution to have been void.

(2) If a community interest company has been struck off the register under Article 603 of the 1986 Order (defunct companies), the Regulator may apply under Article 604(2) of that Order for an order that the company's name be restored.

(3) If an application under Article 603A of the 1986 Order (application to strike name of private company off register) is made on behalf of a community interest company, Article 603B(6) of that Order (persons to be notified of application) is to be treated as also requiring a copy of the application to be given to the Regulator.

#### *Change of status*

#### **Re-registration**

**50.**—(1) A community interest company is excluded from re-registering under Article 59 of the 1986 Order (re-registration of limited company as unlimited).

(2) If a community interest company which is not a public company re-registers as a public company under Article 53 of the 1986 Order, or a community interest company which is a public company re-registers as a private company under Article 63 of that Order, the certificate of incorporation issued under Article 57(1)(b) or 65(1)(b) of that Order is to contain a statement that the company is a community interest company.

(3) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.

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

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

- (a) by Articles 52 and 53 (becoming a charity), or
- (b) if regulations are made under Article 54 (becoming an industrial and provident society), by the regulations.

### **Becoming a charity: requirements**

**52.—**(1) If a community interest company is to cease being a community interest company and become a charity the company must by special resolutions under the 1986 Order—

- (a) alter its memorandum so that it does not state that it is to be a community interest company,
- (b) make such alterations of its memorandum and articles as it considers appropriate, and
- (c) change its name so that it does not comply with Article 32.

(2) Article 388(1) of the 1986 Order (forwarding of copies of special resolutions to registrar of companies) must be complied with in relation to each of the special resolutions at the same time.

(3) If the special resolutions include one under Article 15 or 28 of the 1986 Order (alterations of memorandum)—

- (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
- (b) Article 388(1) has effect in relation to them as if it referred to 15 days after the relevant date.

(4) If an application is made under Article 16 of the 1986 Order (objection to alteration of memorandum under Article 15 or 28), the relevant date is—

- (a) the date on which the court determines the application (or, if there is more than one application, the date on which the last to be determined by the court is determined), or
- (b) such later date as the court may order.

(5) If there is no application under Article 16 of that Order, the relevant date is the end of the period for making such an application.

(6) The copies of the special resolutions forwarded to the registrar of companies must be accompanied by—

- (a) a copy of the memorandum and articles of the company as altered by the special resolutions, and
- (b) a statement by the Commissioners of Her Majesty's Revenue and Customs that the company has claimed exemption under section 505(1) of the Income and Corporation Taxes Act 1988 (c. 1).

### **Becoming a charity: decisions**

**53.—**(1) On receiving under Article 52 the copies of the special resolutions, the memorandum and articles as altered by the special resolutions and the statement, the registrar must (instead of recording the special resolutions and entering a new name on the register)—

- (a) forward a copy of each of the documents to the Regulator, and

- (b) retain them pending the Regulator's decision.
- (2) The alterations of the memorandum and articles made by the special resolutions are to take effect only as provided by this Article.
- (3) The Regulator must decide whether the company is eligible to cease being a community interest company.
- (4) The company is eligible to cease being a community interest company if it has complied with Article 52 and none of the following applies—
  - (a) the Regulator has under Article 41 appointed an auditor to audit the company's annual accounts and the audit has not been completed,
  - (b) civil proceedings instituted by the Regulator in the name of the company under Article 42 have not been determined or discontinued,
  - (c) a director of the company holds office by virtue of an order under Article 43,
  - (d) a director of the company is suspended under Article 44(3),
  - (e) there is a manager in respect of the property and affairs of the company appointed under Article 45,
  - (f) the Official Property Holder holds property as trustee for the company,
  - (g) an order under Article 46(2) or (3) is in force in relation to the company,
  - (h) a petition has been presented for the company to be wound up.
- (5) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).
- (6) If the Regulator gives notice of a decision that the company is eligible to cease being a community interest company, Article 38(6) of the 1986 Order (registration of new name) applies; and if the registrar of companies enters the new name of the company on the register he must also retain and record the special resolutions and the statement.
- (7) On the date on which the certificate of incorporation is issued the alterations to the company's articles and memorandum made by the special resolutions take effect and the company ceases to be a community interest company.
- (8) If the Regulator decides that the company is not eligible to cease being a community interest company, the company may appeal to the Appeal Officer against the decision.

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

- 54.**—(1) Unless regulations make provision to the contrary, a community interest company may not convert itself into a registered society under section 62 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).
- (2) If regulations make provision allowing the conversion of community interest companies under that section they may include provision modifying that section in its application by virtue of the regulations.

### *Supplementary*

#### **Fees**

- 55.**—(1) Regulations may require the payment of such fees in connection with the Regulator's functions as may be specified in the regulations.
- (2) The regulations may provide for fees to be paid to the registrar of companies (rather than to the Regulator).

(3) The Regulator may charge a fee for any service which is provided otherwise than in pursuance of an obligation imposed by law, other than the provision of guidance which the Regulator considers to be of general interest.

(4) Fees paid by virtue of this Article are to be paid into the Consolidated Fund.

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

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

- (a) Part XXIV of the 1986 Order (registrar), or
- (b) Part XXV of that Order (miscellaneous and supplementary),

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

#### **Information**

**57.**—(1) Regulations may require the registrar of companies—

- (a) to notify the Regulator of matters specified in the regulations, and
- (b) to provide the Regulator with copies of documents specified in the regulations.

(2) A public authority may disclose to the Regulator, for any purpose connected with the exercise of the Regulator's functions, information received by the authority in connection with its functions.

(3) The Regulator may disclose to a public authority any information received by the Regulator in connection with the functions of the Regulator—

- (a) for a purpose connected with the exercise of those functions, or
- (b) for a purpose connected with the exercise by the authority of its functions.

(4) In deciding whether to disclose information to a public authority in a country or territory outside the United Kingdom the Regulator must have regard to the considerations listed in section 243(6) of the Enterprise Act 2002 (c. 40) (overseas disclosures), but as if the reference to information of a kind to which section 237 of that Act applies were to information of the kind the Regulator is considering disclosing.

(5) The powers to disclose information in paragraphs (2) and (3) are subject to—

- (a) any restriction on disclosure imposed by or under a statutory provision; and
- (b) any express restriction on disclosure subject to which information was supplied.

(6) Information may be disclosed under paragraph (2) or (3) subject to a restriction on its further disclosure.

(7) A person who discloses information in contravention of a restriction imposed under paragraph (6) is guilty of an offence, but a prosecution may be instituted only with the consent of the Regulator or the Director of Public Prosecutions for Northern Ireland.

(8) A person guilty of an offence under paragraph (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) In this Article “public authority” means a person or body having functions of a public nature.

#### **Orders made by Regulator**

**58.**—(1) An order made by the Regulator under this Part must be given to the community interest company in relation to which it is made and—

- (a) if the order is under Article 44(1) or (3), to the director removed or suspended,



- (b) if the order is under Article 46(1)(b) or (2), to the person to whom the order is directed,
- (c) if the order is under Article 47(1), to the persons from and to whom shares are transferred,
- (d) if the order is under Article 47(2), to the person whose interest is extinguished and any person appointed in his place.

(2) Orders made by the Regulator under this Part may contain any incidental or supplementary provisions the Regulator considers expedient.

(3) When discharging an order made under this Part, the Regulator may make savings and transitional provisions.

(4) A document certified by the Regulator to be a true copy of an order made by the Regulator is evidence of the order without further proof; and a document purporting to be so certified shall, unless the contrary is proved, be taken to be so certified.

(5) Where the Regulator makes an order or decision against which an appeal lies under this Part, the Regulator must give reasons for the order or decision to the persons entitled to appeal against it.

### **Regulations**

**59.**—(1) Any power to make regulations under this Part is exercisable by the Department.

(2) Regulations under this Part may confer or impose functions on the Regulator or any other person specified in the regulations (and, unless made under paragraph 4 of Schedule 5, may provide for appeals to the Appeal Officer from a person on whom functions are conferred by the regulations).

(3) No regulations to which this paragraph applies are to be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(4) Paragraph (3) applies to regulations made under (or containing provision made under)—

- (a) Article 29,
- (b) Article 30,
- (c) Article 31,
- (d) Article 33,
- (e) Article 34,
- (f) Article 35,
- (g) Article 36,
- (h) Article 45, and
- (i) Article 54.

(5) Regulations under this Part are (unless a draft of them has been approved by the Assembly under paragraph (3)) subject to negative resolution.

### **Interpretation of Part III**

**60.**—(1) In this Part—

“administrative receiver” has the meaning given by Article 5(1) of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#),

“the Appeal Officer” has the meaning given by Article 27(1),

“charity” has the same meaning as in the Charities Act (Northern Ireland) 1964 (c. 33),

“community interest object” is to be construed in accordance with Article 34(3),

“the community interest test” is to be construed in accordance with Article 34(2),

“excluded company” is to be construed in accordance with Article 34(6),

“the Official Property Holder” has the meaning given by Article 28(1),

“the Regulator” has the meaning given by Article 26(1).

(2) Any expression used in this Part and in the 1986 Order has the same meaning in this Part as in that Order.