
STATUTORY INSTRUMENTS

2005 No. 1967

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

PART III

COMMUNITY INTEREST COMPANIES

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.