
STATUTORY INSTRUMENTS

1984 No. 134

COMPANIES

**The Companies Acts (Pre-Consolidation Amendments) Order
1984**

Laid before Parliament in draft

Made - - - - 8th February 1984

*Coming into operation in accordance with section
116(2) of the Companies
Act 1981(a).*

At the Court at Buckingham Palace, the 8th day of February 1984

Present,

The Queen's Most Excellent Majesty in Council

Whereas Her Majesty may by Order in Council under section 116 of the Companies Act 1981 make such amendments of the Companies Acts (within the meaning given to that citation by subsection (4) of that section) and of any other enactment relating to companies, whenever passed, as may be jointly recommended by the Law Commission and the Scottish Law Commission as desirable to enable a satisfactory consolidation of the whole or the greater part of the Companies Acts to be produced:

And whereas the Law Commission and the Scottish Law Commission, in a report to the Lord Chancellor and the Lord Advocate, which report has been laid before Parliament by Command of Her Majesty(b), have jointly recommended certain amendments of the Companies Acts 1948 to 1983 as desirable for the purpose above-mentioned:

And whereas a draft of this Order has been laid before Parliament and has been approved by a resolution of each House:

Now, therefore, Her Majesty, in pursuance of section 116 of the Companies Act 1981, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows;—

(a) 1981 c.62.

(b) Cmnd. 9114.

A. Amendments of the Companies Act 1948(a)

1. In section 2(4) of the Companies Act 1948, for paragraph (c) there shall be substituted the following paragraph—

“(c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.”.

2. In section 7 of the Companies Act 1948, for subsection (1) there shall be substituted—

“(1) In the case of an unlimited company having a share capital, the articles must state the amount of share capital with which the company proposes to be registered.”;

and subsections (2) and (3) shall be omitted.

3. In section 51 of the Companies Act 1948, in subsection (6), all the words following “in pursuance of the prospectus” in paragraph (a) shall be omitted; and after that subsection there shall be inserted—

“(7) Where a prospectus offers shares for sale—

(a) subsection (1) of this section applies as if the reference to allotment were a reference to sale;

(b) subsection (2) does not apply, but—

(i) if the permission referred to in subsection (1) has not been applied for as there mentioned, or has been refused as there mentioned, the offeror of the shares shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and

(ii) if any such money is not repaid within eight days after the offeror becomes liable to repay it, he shall become liable to pay interest on the money due, at the rate of 5 per cent. per annum from the end of the eighth day;

(c) subsections (3) to (6) apply, but in subsection (3) for the first reference to the company there shall be substituted a reference to the offeror, and for the reference to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.”.

4. In section 52 of the Companies Act 1948, in subsection (1)(a), for the words “names, addresses and descriptions” there shall be substituted the words “names and addresses”.

5. At the end of section 106 of the Companies Act 1948, there shall be added as a subsection (2)—

“(2) In relation to such a company sections 103 and 104 apply with the

(a) 1948 c.38.

substitution, for the reference to the company's registered office, of a reference to its principal place of business in England and Wales.”.

6. At the end of section 106K of the Companies Act 1948, there shall be added as a subsection (2)—

“(2) In relation to such a company sections 106H and 106I apply with the substitution, for the reference to the company's registered office, of a reference to its principal place of business in Scotland.”.

7. In section 124(1) of the Companies Act 1948, for the words “the form set out in Part II of that Schedule or as near thereto as circumstances admit” there shall be substituted the words “the prescribed form”.

8. In section 125(2) of the Companies Act 1948, for the words “annexed to” there shall be substituted the words “included in”.

9. In section 125(2) of the Companies Act 1948, the words from “(or, in the case” to “would be required)” shall be omitted.

10. In section 126(2) of the Companies Act 1948, for the words from the beginning to “default fine” there shall be substituted—

“If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction after continued contravention to a default fine (within the meaning of section 80(2) of the Companies Act 1980) not exceeding one-tenth of the statutory maximum.”.

11. In section 143 of the Companies Act 1948, in paragraph (c) of subsection (4), after the word “resolutions” (where it first appears) there shall be inserted the words “or agreements”.

12. In section 152 of the Companies Act 1948, in subsection (4), for the words from “the end of its financial year” to the end of the subsection there shall be substituted—

“the end of its relevant financial year, that is—

- (a) if its financial year ends with that of the holding company, that financial year, and
- (b) if not, the subsidiary's financial year ending last before the end of the financial year of the holding company dealt with in the group accounts,

and with the subsidiary's profit or loss for its relevant financial year.”.

13. In section 167(2) of the Companies Act 1948, for the word “business” there shall be substituted the word “affairs”.

14. In section 249 of the Companies Act 1948—

- (a) in subsection (4), after the words “has been audited” there shall be inserted the words “(or, as the case may be, forthwith if the Secretary of State decides not to have an audit)”, and
- (b) in subsection (5), for the words “shall cause the account when audited or a summary thereof” there shall be substituted the words “shall, when the account has been audited (alternatively, when he has been notified of the Secretary of State’s decision not to have an audit) cause the account or a summary of it”.

15. In section 320 of the Companies Act 1948, in subsection (3), the words from “the expression” to “notour bankruptcy” shall be omitted.

16. In section 322 of the Companies Act 1948, in subsection (3), for the word “Act” there shall be substituted the word “section”.

17. In the Companies Act 1948, the following shall be substituted for section 348—

“Commission for receiving evidence.

348.—(1) When a company is wound up in England and Wales or in Scotland, the court may refer the whole or any part of the examination of witnesses—

- (a) to a specified county court in England and Wales, or
- (b) to the sheriff principal for a specified sheriffdom in Scotland, or
- (c) to the High Court in Northern Ireland or a specified Northern Ireland county court,

(“specified” meaning specified in the order of the winding-up court).

(2) Any person exercising jurisdiction as a judge of the court to which the reference is made (or, in Scotland, the sheriff principal to whom it is made) shall then, by virtue of this section, be a commissioner for the purpose of taking the evidence of those witnesses.

(3) The judge or sheriff principal shall have in the matter referred the same power of summoning and examining witnesses, of requiring the production and delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

These powers are in addition to any which the judge or sheriff principal might lawfully exercise apart from this section.

(4) The examination so taken shall be returned or reported to the court which made the order in such manner as that court requests.

(5) This section extends to Northern Ireland.”.

18. In section 372 of the Companies Act 1948, in subsection (2), after the words “the last preceding abstract related” there shall be inserted the words “(or, if no preceding abstract has been sent under this section, from the date of his appointment)”.

19. In section 374 of the Companies Act 1948, in subsection (1), after the words “the last preceding abstract related” there shall be inserted the words “(or, if no preceding abstract has been delivered under this section, from the date of his appointment)”.

20. In section 384 of the Companies Act 1948, before paragraph (a) there shall be inserted the following paragraph—

“(aa) a statement in the prescribed form specifying the name with which the company is proposed to be registered;”.

21. In section 384 of the Companies Act 1948, in paragraph (c), subparagraphs (iii), (iiia) and (iv) shall be omitted.

22. In section 385 of the Companies Act 1948, before paragraph (a) there shall be inserted the following paragraph—

“(aa) a statement in the prescribed form specifying the name with which the company is proposed to be registered; and”.

23. In Part VIII of the Companies Act 1948, after section 387 the following section shall be inserted—

“Requirements as to name of company registering.

387A.—(1) The following applies with respect to the name of a company registering under this Part (whether a joint stock company or not).

(2) If the company is to be registered as a public company, its name must end with the words “public limited company” or, if it is stated that the company’s registered office is to be situated in Wales, with those words or their equivalent in Welsh (“cwmni cyfyngedig cyhoeddus”); and those words or that equivalent may not be preceded by the word “limited” or its equivalent in Welsh (“cyfyngedig”).

(3) In the case of a company limited by shares or by guarantee (not being a public company), the name must have “limited” as its last word (or,

if the company's registered office is to be situated in Wales, "cyfyngedig"); but this is subject to section 25 of the Companies Act 1981 (exempting, in certain circumstances, a company from the requirement to have "limited" as part of the name)."

24. In section 384(a) of the Companies Act 1948, for the words "names, addresses and occupations" there shall be substituted the words "names and addresses".

25. In section 407 of the Companies Act 1948, the following amendments shall be made—

(a) for subsection (1) there shall be substituted—

"(1) An overseas company which establishes a place of business in Great Britain shall, within one month of doing so, deliver to the registrar of companies for registration—

(a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the company's constitution and, if the instrument is not written in English, a certified translation of it; and

(b) a return in the prescribed form containing—

(i) a list of the directors and secretary of the company containing the particulars mentioned in subsection (2) below,

(ii) a list of the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company service of process and any notices required to be served on the company,

(iii) a list of the documents delivered in compliance with paragraph (a) of this subsection, and

(iv) a statutory declaration (made by a director or secretary of the company or by any person whose name and address are given in the list required by sub-paragraph (ii)) stating the date on which the company's place of business in Great Britain was established."

(b) in subsection (2), for the words "paragraph (b)" there shall be substituted the words "paragraph (b)(i)", and

(c) subsection (2A) shall cease to have effect.

26. In section 409 of the Companies Act 1948, for the words "the prescribed time" (where they occur in each of subsections (1) and (2)) there shall be substituted the words "the time specified below"; and after subsection (2) there shall be inserted—

"(3) The time for delivery to the registrar of the return required by subsection (1) or (2) is—

- (a) in the case of an alteration to which subsection (1)(c) applies, 21 days after the making of the alteration, and
- (b) in any other case, 21 days after the date on which notice of the alteration or change in question could have been received in Great Britain in due course of post (if despatched with due diligence)."

27. In section 455(1) of the Companies Act 1948, after the definition of "officer" there shall be inserted—

"'place of business' includes a share transfer or share registration office", and accordingly the definition of "place of business" shall be omitted from section 415 in part X of that Act.

28. In Schedule 6 to the Companies Act 1948, in paragraph 4, the words from "(or, in the case" to "would be required)" shall be omitted.

29. In Schedule 8 to the Companies Act 1948, in paragraph 38(2)(b), after the words "of the company" there shall be inserted the words "or of the shareholder".

30. In Schedule 8A to the Companies Act 1948, in paragraph 2(a), after the words "at the option of the company" there shall be inserted the words "or of the shareholder".

B. Amendments of the Companies Act 1967(a)

31. In section 43 of the Companies Act 1967, the following shall be inserted after subsection (1)—

"(1A) A company cannot be re-registered under this section if it has previously been re-registered as unlimited."

32. In section 44 of the Companies Act 1967, the following shall be inserted after subsection (1)—

"(1A) A company cannot under this section be re-registered as a public company."

33. In section 46 of the Companies Act 1967, after subsection (3) there shall be inserted—

"(3A) Where a company changes its name under this section, the change has effect from the date on which the altered certificate of incorporation is issued by the registrar of companies."

(a) 1967 c.81.

34. In section 111(1) of the Companies Act 1967, in paragraph (d), for the reference to the Insurance Companies Act 1974(a) there shall be substituted a reference to the Insurance Companies Act 1982(b).

C. Amendment of the Companies (Floating Charges and Receivers) (Scotland) Act 1972(c)

35. In section 25 of the Companies (Floating Charges and Receivers) (Scotland) Act 1972, in subsection (2), after the words “the last preceding abstract related” there shall be inserted the words “(or, if no preceding abstract has been sent under this section, from the date of his appointment)”.

D. Amendment of the European Communities Act 1972(d)

36. In section 9(8) of the European Communities Act 1972, for the reference to section 107 of the Companies Act 1948 there shall be substituted a reference to section 23 of the Companies Act 1976(e).

E. Amendments of the Companies Act 1976

37. In section 9 of the Companies Act 1976, the following shall be substituted for subsection (2)—

“(2) In respect of each accounting reference period of the company, an oversea company shall deliver to the registrar of companies copies of the accounts and other documents required by subsection (1); and, if any such account or document is in a language other than English, there shall be annexed to the copy so delivered a certified translation of it into English.”; and in subsection (3) for the words “any accounts” there shall be substituted the words “any accounts or other documents”.

38. In the Companies Act 1976, the following shall be substituted for section 29—

“Register of disqualification orders.

29.—(1) The Secretary of State may make regulations requiring officers of courts to furnish him with such particulars as the regulations may specify of cases in which—

- (a) a disqualification order is made under section 188 of the Act of 1948 or section 9 of the Insolvency Act 1976, or
- (b) any action is taken by a court in consequence of which such an order is varied or ceases to be in force, or
- (c) leave is granted by a court for a person subject to such an order to do any thing

(a) 1974 c.49.
 (b) 1982 c.50.
 (c) 1972 c.67.
 (d) 1972 c.68.
 (e) 1976 c.69.

which otherwise the order prohibits him from doing;

and the regulations may specify the time within which, and the form and manner in which, such particulars are to be furnished.

(2) The Secretary of State shall, from the particulars so furnished, maintain a register of such orders and of cases in which leave has been granted as mentioned in subsection (1)(c).

(3) When an order of which entry is made in the register ceases to be in force, the Secretary of State shall delete the entry from the register and all particulars relating to it which have been furnished to him under this section.

(4) The register shall be open to inspection on payment of such fee as may be specified by the Secretary of State in regulations made by him.

(5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”.

F. Amendments of the Companies Act 1980(a)

39. In section 5 of the Companies Act 1980, the following shall be inserted after subsection (1)—

“(1A) A company cannot be re-registered under this section if it has previously been re-registered as unlimited.”.

40. In section 5 of the Companies Act 1980, in subsection (5), for the words “subsections (2) to (7) and (11) and (12)” there shall be substituted the words “subsections (2) to (7), (11), (11A) and (12) (except paragraph (a))”; and at the end of the subsection there shall be added—

“In subsections (2) and (2A) of section 24, as applied by this subsection, “another company” includes any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837.”.

41. In section 10 of the Companies Act 1980, after subsection (2) there shall be inserted—

“(2A) A company cannot under this section be re-registered otherwise than as a company limited by shares or by guarantee.”.

42. In section 14 of the Companies Act 1980, in subsection (10) after the

(a) 1980 c.22.

words “such a right but” there shall be inserted the words “(subject to the following subsection)”; and after that subsection there shall be inserted—

“(11) In relation to authority under this section for the grant of such rights as are mentioned in subsection (10)(b), the reference in subsection (3) to the maximum amount of relevant securities that may be allotted under the authority (as also the corresponding reference in subsection (4)) is to the maximum amount of shares which may be allotted pursuant to the rights.”.

43. In section 17(13) of the Companies Act 1980, for the words from “as including” to the end of the subsection there shall be substituted—

“as references to whoever was at the close of business on a date, to be specified in the offer and to fall in the period of 28 days immediately before the date of the offer, the holder of shares of that description”.

44. In section 24(2A) of the Companies Act 1980, for the words “by a nominee” (where those words occur for the second time) there shall be substituted the words “by or by a nominee”.

45. In section 37 of the Companies Act 1980, in subsection (9), the words “are otherwise acquired by the company” shall be omitted from paragraph (a), and after that paragraph there shall be inserted—

“(aa) are acquired by the company (otherwise than by such surrender or forfeiture, and otherwise than by any of the methods mentioned in section 35(4) above), the company having a beneficial interest in the shares, or”.

46. In section 48(1) of the Companies Act 1980, in paragraph (a), after the words “with such a director” there shall be inserted the words “acquires or”; and in paragraph (b), after the words “the company acquires” there shall be inserted the words “or is to acquire”.

47. In section 48(3) of the Companies Act 1980, in paragraph (a), the words “or the person nominated by it” shall be omitted.

48. In section 55 of the Companies Act 1980, in paragraph (f), for the words “any other transaction, arrangement or agreement” there shall be substituted the words “any transaction, arrangement or agreement other than those mentioned in paragraphs (d) and (e) above”.

49. In section 57 of the Companies Act 1980, in subsection (1), for the words “if such a transaction or arrangement” there shall be substituted the words “if such a transaction, arrangement or agreement”.

50. In section 63 of the Companies Act 1980, in subsection (3), for the words from “and section 145” to the end of the subsection there shall be substituted—

“and where a shadow director by means of such a notice declares an interest in a contract or proposed contract, section 145 of the 1948 Act shall apply, if

it is a specific notice under paragraph (a) above, as if the declaration had been made at the meeting there referred to and otherwise as if it had been made at the meeting of the directors next following the giving of the notice, and the making of the declaration shall in either case be deemed to form part of the proceedings at the meeting.”.

51. In Schedule 2 to the Companies Act 1980, there shall be inserted after the references to the Companies Act 1967 the following:—

“COMPANIES (FLOATING CHARGES AND RECEIVERS) (SCOTLAND) ACT 1972 (c.67)	
11(4)	<p>Body corporate or Scottish firm acting as a receiver</p> <p>On summary conviction a fine not exceeding level 3 on the standard scale as defined in section 289G of the Criminal Procedure (Scotland) Act 1975.</p> <p>(a) On conviction on indictment a fine. (b) On summary conviction a fine not exceeding the statutory maximum.</p>
13(2)	<p>Failing to deliver to the registrar a copy instrument of appointment of a receiver.</p> <p>On summary conviction a fine not exceeding £5 for every day during which the default continues.</p> <p>On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.</p>
14(4)	<p>Failing to deliver to the registrar the court's interlocutor making the appointment of a receiver.</p> <p>On summary conviction a fine not exceeding £5 for every day during which the default continues.</p> <p>On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.</p>
22(5)	<p>Failing to give notice to the registrar of cessation or removal of receiver.</p> <p>On summary conviction a fine not exceeding £5 for every day during which the default continues.</p> <p>On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.</p>
24(2)	<p>Not stating on company documents that a receiver has been appointed.</p> <p>On summary conviction a fine not exceeding level 1 on the standard scale as defined in section 289G of the Criminal Procedure (Scotland) Act 1975.</p> <p>On summary conviction a fine not exceeding one-fifth of the statutory maximum.</p>

25(7)	Receiver making default in complying with provisions as to information where receiver appointed.	On summary conviction a fine not exceeding £5 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.
26(5)	Default in relation to provisions as to statement to be submitted to receiver.	On summary conviction a fine not exceeding £10 for every day during which the default continues.	On summary conviction a fine not exceeding one-fifth of the statutory maximum or, on conviction after continued contravention, a default fine not exceeding one-fiftieth of the statutory maximum.”

G. Amendments of the Companies Act 1981(a)

52. In section 12 of the Companies Act 1981, the following shall be inserted at the end of subsection (5)—

“This subsection does not apply to a public company, or to a banking, insurance or shipping company (the definitions in paragraph 8 of Schedule 2 to this Act to apply).”.

53. In section 24 of the Companies Act 1981, for subsection (3) there shall be substituted—

“(3) If it appears to the Secretary of State that misleading information has been given for the purposes of a company’s registration with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, he may within 5 years of the date of its registration with that name in writing direct the company to change its name within such period as he may specify.”.

54. In section 26 of the Companies Act 1981, in subsection (3), for the words “section 384(c)” there shall be substituted the words “section 384(aa) or 385(aa)”.

55. In section 31(2) of the Companies Act 1981, after the words “any such word or expression” there shall be inserted the words “and a Government department or other body is specified under subsection (1)(b) in relation to that word or expression”.

56. In section 31(3) of the Companies Act 1981, after the words “any such word or expression” there shall be inserted the words “and a Government department or other body is specified under subsection (1)(b) in relation to that word or expression”.

57. In section 43(6) of the Companies Act 1981, after the words “where the shares” there shall be inserted the words “acquired or”.

58. In section 77(7) of the Companies Act 1981, for the words “the shares held or to be held by him” there shall be substituted the words “any interest held or to be held by him in any shares”.

H. Amendment of the Companies (Beneficial Interests) Act 1983(b)

59. In section 1 of the Companies (Beneficial Interests) Act 1983, after paragraph (d) there shall be inserted—

“and

(e) section 37(9)(aa) of that Act.”.

(a) 1981 c.62.
(b) 1983 c.50.

I. Citation and Commencement

60. This Order may be cited as the Companies Act, (Pre-Consolidation Amendments) Order 1984 and shall come into operation under and in accordance with section 116(2) of the Companies Act 1981.

N. E. Leigh,
Clerk of the Privy Council

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes certain amendments of the Companies Acts 1948 to 1983, in connection with the consolidation of those Acts. The power to make these amendments derives from section 116 of the Companies Act 1981, and is exercisable on the basis of recommendations made by the Law Commission and the Scottish Law Commission acting jointly. The amendments will come into force simultaneously with the coming into force of the Consolidation Acts. Each of the amendments made by the Order is the subject of a recommendation by the two Commissions as published in their report (Cmnd 9114). For an explanation of any amendment reference may be had to the corresponding recommendation in that report.

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