

SCHEDULE 2

Regulation 9

TRANSITIONAL PROVISIONS AND SAVINGS

Introduction

1.—(1) In this Schedule—

- (a) “the 1985 Act” means the Companies Act 1985 and “the 1985 Regulations” means the Companies (Unregistered Companies) Regulations 1985;
- (b) “the 1986 Order” means the Companies (Northern Ireland) Order 1986⁽¹⁾ and “the 1986 Regulations” means the Companies (Unregistered Companies) Regulations (Northern Ireland) 1986;
- (c) “existing company” means an unregistered company that was incorporated before 1st October 2009.

(2) References in this Schedule to provisions of the 1985 Act or 1986 Order, or to provisions of the Companies Act 2006, are to those provisions as applied to unregistered companies.

A company’s constitution

2.—(1) Section 26(1) of the Companies Act 2006 (registrar to be sent copy of instruments constituting or regulating company) applies where the company is incorporated on or after 1st October 2009.

(2) Section 18 of the 1985 Act as modified by regulation 6(b)(ii) of the 1985 Regulations or Article 29 of the 1986 Order as modified by regulation 6(b)(ii) of the 1986 Regulations continues to apply where the company was incorporated before that date.

3.—(1) Section 26(2) of the Companies Act 2006 (registrar to be sent copy of amended instrument constituting or regulating company) applies where the amendment takes effect on or after 1st October 2009.

(2) Section 18(2) and (3) of the 1985 Act or Article 29(2) and (3) of the 1986 Order continue to apply in relation to amendments taking effect before that date.

4.—(1) Section 34 of the Companies Act 2006 (notice to registrar where company’s constitution altered by enactment) applies where the enactment in question comes into force on or after 1st October 2009.

(2) Section 18(1) and (3) of the 1985 Act or Article 29(1) and (3) of the 1986 Order continue to apply in relation to alterations made by statutory provisions coming into force before that date.

5. Section 35 of the Companies Act 2006 (notice to registrar where company’s constitution altered by order) applies in relation to orders made on or after 1st October 2009.

A company’s capacity and related matters

6.—(1) Section 39 of the Companies Act 2006 (a company’s capacity) applies to acts of a company done on or after 1st October 2009.

(2) Section 35 of the 1985 Act or Article 45 of the 1986 Order continues to apply to acts of a company done before that date.

(1) [S.I. 1986/1032 \(N.I. 6\)](#).

Status: This is the original version (as it was originally made).

7.—(1) Section 44 of the Companies Act 2006 (execution of documents) applies in relation to the execution of documents on or after 1st October 2009.

(2) Section 36A of the 1985 Act or Article 46A of the 1986 Order continues to apply in relation to documents executed before that date.

(3) For the purposes of this paragraph a document signed by one authorised signatory before 1st October 2009 and by another on or after that date is treated as executed on or after 1st October 2009.

A company's principal office in the United Kingdom

8. Section 86(2) of the Companies Act 2006 (registrar to be notified of address of company's principal office in the United Kingdom) applies where the company is incorporated on or after 1st October 2009.

Directors and secretaries

9. On and after 1st October 2009 the register of directors and secretaries kept by a company under section 288(1) of the 1985 Act or Article 296(1) of the 1986 Order shall be treated as two separate registers—

- (a) a register of directors kept under and for the purposes of section 162 of the Companies Act 2006, and
- (b) a register of secretaries kept under and for the purposes of section 275 of that Act.

10.—(1) Subject to the following provisions, an existing company need not comply with any provision of the Companies Act 2006 requiring the company's register of directors or secretaries to contain particulars additional to those required by the 1985 Act or the 1986 Order until the earlier of—

- (a) the date to which the company makes up its first annual return made up to a date on or after 1st October 2009, and
- (b) the last date to which the company should have made up that return.

(2) Sub-paragraph (1) does not apply in relation to a director or secretary of whom particulars are first registered on or after 1st October 2009 (whether the director or secretary was appointed before, on or after that date).

(3) Sub-paragraph (1) ceases to apply in relation to a director or secretary whose registered particulars fall to be altered on or after 1st October 2009 because they have changed (whether the change occurred before, on or after that date).

(4) This paragraph does not affect the particulars required to be included in the company's annual return.

11.—(1) In the case of an existing company—

- (a) the relevant existing address of a director or secretary is deemed, on and after 1st October 2009, to be a service address, and
- (b) any entry in the company's register of directors or secretaries stating that address is treated, on and after that date, as complying with the obligation in section 163(1)(b) or 277(1)(b) of the Companies Act 2006 to state a service address.

(2) The relevant existing address is—

- (a) the address that immediately before 1st October 2009 appeared in the company's register of directors and secretaries as having been notified to the company under section 289(1A) or 290(1A) of the 1985 Act (service address notified by individual applying for confidentiality order in respect of usual residential address), or

(b) if no such address appeared, the address that immediately before that date appeared in the company's register of directors and secretaries as the director's or secretary's usual residential address.

(3) Any notification of a change of a relevant existing address occurring before 1st October 2009 that is received by the company on or after that date is treated as being or, as the case may be, including notification of a change of service address.

(4) The operation of this paragraph does not give rise to any duty to notify the registrar under section 167 or 276 of the Companies Act 2006 (duty to notify registrar of changes in particulars contained in register).

12.—(1) An existing company must remove from its register of directors on 1st October 2009 any entry relating to a shadow director.

(2) Section 167 of the Companies Act 2006 (duty to notify registrar of changes) applies as if the shadow director had ceased to be a director on that date.

13. The removal by an existing company from its register of directors or secretaries on or after 1st October 2009 of particulars required by the 1985 Act or the 1986 Order but not required by the Companies Act 2006 does not give rise to any duty to notify the registrar under section 167 or 276 of the Companies Act 2006 (duty to notify registrar of changes in particulars contained in register).

14.—(1) The duty of a company to keep a register of directors' residential addresses has effect on and after 1st October 2009.

(2) The entry on that register of information that immediately before that date was contained in the company's register of directors and secretaries does not give rise to any duty to notify the registrar under section 167 of the Companies Act 2006 (duty to notify registrar of changes in particulars contained in register).

15.—(1) Sections 167 and 276 of the Companies Act 2006 (duty to notify registrar of changes) apply in relation to—

- (a) a change among a company's directors or in its secretaries, or
- (b) a change in the particulars contained in the register,

occurring on or after 1st October 2009.

(2) Sections 288(2), (4) and (6), 289 and 290 of the 1985 Act or Articles 296(2), (4) and (6), 297 and 298 of the 1986 Order (notification to registrar of changes) continue to apply in relation to a change occurring before that date.

16.—(1) The registrar may make such entries in the register as appear to be appropriate having regard to paragraphs 10 to 14 and the information appearing on the register immediately before 1st October 2009 or notified to the registrar in accordance with paragraph 15(2).

(2) In particular, the registrar may record as a service address a relevant existing address (within the meaning of paragraph 11).

(3) Any notification of a change of a relevant existing address occurring before 1st October 2009 that is received by the registrar on or after that date is treated as being or, as the case may be, including notification of a change of service address.

17. Where a director's usual residential address appears as a service address—

- (a) in the company's register of directors by virtue of paragraph 11, or
- (b) in the register of companies by virtue of paragraph 16,

that address is not protected information for the purposes of Chapter 8 of Part 10 of the Companies Act 2006.

18.—(1) Section 242(1) of the Companies Act 2006 (duty of registrar to omit protected information from material available for inspection) does not apply—

- (a) to material delivered to the registrar before 1st October 2009, or
- (b) to material delivered to the registrar on or after 1st October 2009 by virtue of paragraph 15(2) (notification of change occurring before that date).

(2) In section 242(2)(b) of the Companies Act 2006 (exclusion of material registered before commencement) the reference to things registered before Chapter 8 of Part 10 of that Act comes into force is treated as including anything registered as a result of a notification in accordance with paragraph 15(2) (notification on or after 1st October 2009 of change occurring before that date).

19. In determining under section 245(1) of the Companies Act 2006 whether to put a director's usual residential address on the public record, the registrar may take into account only—

- (a) communications sent by the registrar on or after 1st October 2009, and
- (b) evidence as to the effectiveness of service coming to the registrar's attention on or after that date.

Political donations and expenditure

20.—(1) Sections 362 to 379 of the Companies Act 2006 (political donations and expenditure) apply to donations made or expenditure incurred on or after 1st October 2007.

(2) Section 379(2) of that Act applies as to the time when a donation is regarded as made or expenditure as incurred, including where it is made or incurred in pursuance of a contract entered into before that date.

(3) Part 10A of the 1985 Act continues to apply to donations or expenditure in relation to which the relevant time, as defined in section 347A(10) of that Act, is before that date.

(4) The repeal of that Part does not affect paragraph 3(4) of Schedule 7 to the 1985 Act (matters to be dealt with in directors' report: expressions to have same meaning as in Part 10A).

Accounts

21.—(1) Sections 380 to 416, 418 to 469 and 471 to 474 of the Companies Act 2006 (accounts and reports) apply to accounts and reports for financial years beginning on or after 1st October 2009.

(2) The corresponding provisions of the 1985 Act or 1986 Order continue to apply to accounts and reports for financial years beginning before that date.

22. Any question whether—

- (a) for the purposes of section 382, 383, 384(3) or 467(3) of the Companies Act 2006, a company or group qualified as small in a financial year beginning before 1st October 2009, or
- (b) for the purposes of section 465 or 466 of that Act a company or group qualified as medium-sized in any such financial year,

is to be determined by reference to the corresponding provisions of the 1985 Act or 1986 Order.

Audit

23.—(1) In Chapter 1 of Part 16 of the Companies Act 2006 (requirement for audited accounts)—

(a) sections 475 to 481 (general provisions) apply to accounts for financial years beginning on or after 1st October 2009; and

(b) section 484 (general power of amendment by regulations) applies accordingly.

(2) Sections 235(1), 249A(1), (3) and (6) to (7), 249AA and 249B of the 1985 Act or Articles 243(1), 257A(1), (3) and (6) to (7), 257AA and 257B of the 1986 Order continue to apply to accounts for financial years beginning before that date.

24.—(1) Sections 485 to 488 of the Companies Act 2006 (appointment of auditors of private companies) apply in relation to appointments for financial years beginning on or after 1st October 2009.

(2) Sections 384 to 388A of the 1985 Act or Articles 392 to 396A of the 1986 Order continue to apply in relation to appointments for financial years beginning before that date.

(3) Where—

(a) a private company has elected under section 386 of the 1985 Act or Article 394 of the 1986 Order to dispense with the annual appointment of auditors, and

(b) the election is in force immediately before 1st October 2009.

section 487(2)(a) of the Companies Act 2006 (no deemed reappointment of auditors appointed by directors) does not prevent the deemed reappointment under that subsection of auditors first appointed before 1st October 2009.

25.—(1) This paragraph applies where immediately before 1st October 2009 a resolution of a private company under section 390A of the 1985 Act or Article 398A of the 1986 Order (remuneration of auditors) was in force and was expressed (in whatever terms) to continue to have effect so long as a resolution under section 386 of that Act or Article 394 of that Order (election to dispense with annual appointment of auditors) continued in force.

(2) The repeal of section 386 of the 1985 Act or Article 394 of the 1986 Order does not affect the continued operation of the resolution, which shall continue to have effect until—

(a) it is revoked or superseded by a further resolution,

(b) the auditors to which it applies cease to hold office, or

(c) it otherwise ceases to have effect in accordance with its terms.

26.—(1) In Chapter 2 of Part 16 of the Companies Act 2006 (appointment of auditors)—

(a) sections 489 and 490 (appointment of auditors by public companies) apply to appointments for financial years beginning on or after 1st October 2009;

(b) section 491 (term of office of auditors of public company) applies to auditors appointed for financial years beginning on or after that date.

(2) Sections 384, 385, 387 and 388(1), (3) and (4) of the 1985 Act or Articles 392, 393, 395 and 396(1), (3) and (4) of the 1986 Order continue to apply to appointments by public companies for financial years beginning before that date.

27.—(1) The following provisions apply to auditors appointed for financial years beginning on or after 1st October 2009—

(a) section 492 (fixing of auditor's remuneration),

(b) section 493 (disclosure of terms of audit appointment), and

(c) section 494 (disclosure of services provided by auditor or associated and related remuneration).

(2) Sections 390A and 390B of the 1985 Act or Articles 398A and 398B of the 1986 Order continue to apply to auditors appointed for financial years beginning before that date.

(3) The repeal of section 390A of the 1985 Act and Article 398A of the 1986 Order (remuneration of auditors) does not affect the operation of any such resolution as is mentioned in paragraph 25 above.

28.—(1) In Chapter 3 of Part 16 of the Companies Act 2006 (functions of auditor)—

- (a) sections 495 to 498 (auditor's report and duties of auditor) apply to auditors' reports on accounts or reports for financial years beginning on or after 1st October 2009;
- (b) sections 499 to 501 (rights of auditors) apply to auditors appointed for financial years beginning on or after that date;
- (c) sections 503 to 509 (signature of auditor's report and offences in connection with auditor's report) apply to auditors' reports on accounts or reports for financial years beginning on or after that date.

(2) Sections 235 to 237, 389A and 389B of the 1985 Act or Articles 243 to 245, 397A and 397B of the 1986 Order continue to apply as regards financial years beginning before that date.

29.—(1) Section 502 of the Companies Act 2006 (auditor's rights in relation to resolutions and meetings) applies to auditors appointed on or after 1st October 2009.

(2) Section 390 of the 1985 Act or Article 398 of the 1986 Order continues to apply to auditors appointed before that date.

30.—(1) In Chapter 4 of Part 16 of that Act (removal, resignation, etc of auditors), sections 510 to 513 (removal of auditor) apply where notice of the intended resolution is given to the company on or after 1st October 2009.

(2) Sections 391 and 391A of the 1985 Act or Articles 399 and 399A of the 1986 Order continue to apply where notice of the intended resolution is given to the company before that date.

(3) In section 513 (rights of auditor removed from office) as it applies in relation to an auditor appointed before 1st October 2009, the reference to rights under section 502(2) shall be read as a reference to rights under section 390(1) of the 1985 Act or Article 398(1) of the 1986 Order.

31.—(1) Sections 514 and 515 of the Companies Act 2006 (failure to re-appoint auditor) apply to appointments for financial years beginning on or after 1st October 2009.

(2) Section 391A of the 1985 Act or Article 399A of the 1986 Order continues to apply to appointments for financial years beginning before that date.

32.—(1) Sections 516 to 518 of the Companies Act 2006 (resignation of auditor) apply to resignations occurring on or after 1st October 2009.

(2) Sections 392 and 392A of the 1985 Act or Articles 400 and 400A of the 1986 Order continue to apply to resignations occurring before that date.

(3) In section 518 (rights of resigning auditor) as it applies in relation to an auditor appointed before 1st October 2009, the reference to rights under section 502(2) shall be read as a reference to rights under section 390(1) of the 1985 Act or Article 398(1) of the 1986 Order.

33.—(1) Sections 519 to 525 of the Companies Act 2006 (statement by auditor ceasing to hold office) apply where the auditor ceases to hold office on or after 1st October 2009.

(2) Sections 394 and 394A of the 1985 Act or Articles 401A and 401B of the 1986 Order continue to apply where the auditor ceases to hold office before that date.

34.—(1) Section 526 of the Companies Act 2006 (effect of casual vacancies) applies where the vacancy occurs on or after 1st October 2009.

(2) Section 388(2) of the 1985 Act or Article 396(2) of the 1986 Order continues to apply where the vacancy occurred before that date.

35. In section 527 of the Companies Act 2006—

(a) subsection (1)(a) (matters relating to audit of company's accounts) applies to accounts for financial years beginning on or after 1st October 2009, and

(b) subsection (1)(b) (matters relating to circumstances connected with an auditor of the company) applies to auditors appointed for financial years beginning on or after that date.

36. A resolution passed before 1st October 2009 authorising a liability limitation agreement is effective for the purposes of section 536 of the Companies Act 2006 (authorisation of agreement by members of company) if it complies with the requirements of that section.

Annual return

37.—(1) Sections 854 to 859 of the Companies Act 2006 (a company's annual return) apply to annual returns made up to a date on or after 1st October 2009.

(2) Sections 363 to 365 of the 1985 Act or Articles 371 to 373 of the 1986 Order continue to apply to annual returns made up to a date before 1st October 2009.

(3) Any reference in the Companies Act 2006 to a company's last return, or to a return delivered in accordance with Part 24 of that Act, shall be read as including (so far as necessary to ensure the continuity of the law) a return made up to a date before 1st October 2009 or delivered in accordance with the 1985 Act or the 1986 Order.

Fraudulent trading

38.—(1) Section 458 of the 1985 Act or Article 451 of the 1986 Order (offences of fraudulent trading) continues to apply to offences completed before 1st October 2009.

(2) Where, in the case of an offence—

(a) a relevant event occurs before 1st October 2009, and

(b) another relevant event occurs on or after 1st October 2009,

the offence must be charged under section 993 of the Companies Act 2006 (and not under section 458 of the 1985 Act or Article 451 of the 1986 Order).

(3) If in the case of any such offence a relevant event occurred before 15th January 2007, section 993(3)(a) applies with the substitution of “seven years” for “ten years”.

(4) “Relevant event” means an act, omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

Company investigations

39.—(1) The extension to Northern Ireland by section 1284 of the Companies Act 2006 of Parts 14 and 15 of the 1985 Act (company investigations) has effect to enable the exercise of the powers conferred by those Parts in relation to unregistered companies having their principal office in Northern Ireland, and otherwise in relation to Northern Ireland, on and after 1st October 2009.

(2) Parts 15 and 16 of the 1986 Order, and any other provision of that Order having effect for the purposes of Part 15, continue to apply (subject to sub-paragraph (3) below)—

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- (a) in relation to inspectors appointed under Part 15 before 1st October 2009 and matters arising in connection with or in consequence of any such appointment or any report of inspectors so appointed;
 - (b) in relation to any exercise before 1st October 2009 of any power of the Department of Enterprise, Trade and Investment in Northern Ireland not within paragraph (a), and matters arising in connection with or in consequence of any such exercise.
- (3) A direction in force immediately before 1st October 2009 under Article 438(1A) or 449(1A) of the 1986 Order (direction limiting or relaxing restrictions on shares) shall continue in force and have effect on and after that date as if made under the corresponding provision of Part 14 of the 1985 Act, and the provisions of Part 15 of that Act shall apply accordingly.

Saving for provisions as to form or manner in which documents to be delivered

- 40.**—(1) Any saving in this Schedule for the effect of a provision of the 1985 Act or 1986 Order requiring use of a prescribed form extends to the form and the power under which it is prescribed.
- (2) Any saving in this Schedule for the effect of a provision of the 1985 Act or 1986 Order requiring a document to be delivered to the registrar extends to section 707B of the 1985 Act or Article 656B of the 1986 Order (delivery to the registrar using electronic communications) so far as relating to the provision in question and the delivery of documents under it.

Savings for provisions relating to offences

- 41.**—(1) The repeal of any provision of the 1985 Act or 1986 Order creating an offence does not affect the continued operation of that provision in relation to an offence committed before 1st October 2009.
- (2) Any saving in this Schedule for the effect of a provision of the 1985 Act or 1986 Order that creates an offence extends to the entry relating to that provision in Schedule 24 to that Act or Schedule 23 to that Order (punishment of offences).
- (3) References in this paragraph to provisions of the 1985 Act or 1986 Order include provisions of regulations or orders made under that Act or Order.