
STATUTORY INSTRUMENTS

1989 No. 2404 (N.I. 18)

The Companies (Northern Ireland) Order 1989

19th December 1989

F1

F1 Order repealed (prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#) and the repeal being partly in force, as to which see individual provisions

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Companies (Northern Ireland) Order 1989.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint^{F2}.

F2 partly exercised by SR 1990/176; 1991/410

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F3} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Companies Order” means the Companies (Northern Ireland) Order 1986^{F4};

Definition rep. by 1993 c.36

F3 1954 c. 33 (NI)

F4 1986 NI 6

[^{F5}Application of Order to incorporated friendly societies

2A.—(1) This Order applies to incorporated friendly societies as it applies to companies.

(2) References in this Order to a company, or to a director or an officer of a company include, respectively, references to an incorporated friendly society within the meaning of the Friendly

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Societies Act 1992 or to a member of the committee of management or officer, within the meaning of that Act, of an incorporated friendly society.

(3) In relation to an incorporated friendly society every reference to a shadow director shall be omitted.

(4) In the application of Schedule 1 to the members of the committee of management of an incorporated friendly society, references to provisions of the Insolvency Order or the Companies Order include references to the corresponding provisions of the Friendly Societies Act 1992.]

F5 1992 c.40

Part II (Arts. 3 — 25) rep. by 2002 NI 4

PART III AMENDMENTS OF THE COMPANIES ORDER AND THE INSIDER DEALING ORDER

Takeover offers

26.—(1) For Articles 421, 422 and 423 of the Companies Order there shall be substituted—

“PART XIVA TAKEOVER OFFERS

Takeover offers

421.—(1) In this Part “a takeover offer” means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.

(2) In paragraph (1) “shares” means shares which have been allotted on the date of the offer but a takeover offer may include among the shares to which it relates all or any shares that are subsequently allotted before a date specified in or determined in accordance with the terms of the offer.

(3) The terms offered in relation to any shares shall for the purposes of this Article be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding any variation permitted by paragraph (4).

(4) A variation is permitted by this paragraph where—

- (a) the law of a country or territory outside the United Kingdom precludes an offer of consideration in the form or any of the forms specified in the terms in question or precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous; and

(b) the variation is such that the persons to whom an offer of consideration in that form is precluded are able to receive consideration otherwise than in that form but of substantially equivalent value.

(5) The reference in paragraph (1) to shares already held by the offeror includes a reference to shares which he has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder either for no consideration and under seal or for no consideration other than a promise by the offeror to make the offer.

(6) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Part as the making of a fresh offer and references in this Part to the date of the offer shall accordingly be construed as references to the date on which the original offer was made.

(7) In this Part “the offeror” means, subject to Article 423D, the person making a takeover offer and “the company” means the company whose shares are the subject of the offer.

Right of offeror to buy out minority shareholders

422.—(1) If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine#tenths in value of the shares to which the offer relates he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.

(2) If, in a case in which a takeover offer relates to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine#tenths in value of the shares of any class to which the offer relates, he may give notice to the holder of any shares of that class which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.

(3) No notice shall be given under paragraph (1) or (2) unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that paragraph within 4 months from the date of the offer; and no such notice shall be given after the expiration of 2 months from the date on which he has acquired or contracted to acquire shares which satisfy that minimum.

(4) Any notice under this Article shall be given in the prescribed manner; and when the offeror gives the first notice in relation to an offer he shall send a copy of it to the company together with a statutory declaration by him in the prescribed form stating that the conditions for the giving of the notice are satisfied.

(5) Where the offeror is a company (whether or not a company within the meaning of this Order) the statutory declaration shall be signed by a director.

(6) Any person who fails to send a copy of a notice or a statutory declaration as required by paragraph (4) or makes such a declaration for the purposes of that paragraph knowing it to be false or without having reasonable grounds for believing it to be true shall be liable to imprisonment or a fine, or both, and for continued failure to send the copy or declaration, to a daily default fine.

(7) If any person is charged with an offence for failing to send a copy of a notice as required by paragraph (4) it is a defence for him to prove that he took reasonable steps for securing compliance with that paragraph.

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(8) Where during the period within which a takeover offer can be accepted the offeror acquires or contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer, then, if—

- (a) the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not at that time exceed the value of the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in sub#paragraph (a), no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated for the purposes of this Article as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.

Effect of notice under Article 422

423.—(1) The following provisions shall, subject to Article 423C, have effect where a notice is given in respect of any shares under Article 422.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.

(3) Where the terms of an offer are such as to give the holder of any shares a choice of consideration the notice shall give particulars of the choice and state—

- (a) that the holder of the shares may within 6 weeks from the date of the notice indicate his choice by a written communication sent to the offeror at an address specified in the notice; and
- (b) which consideration specified in the offer is to be taken as applying in default of his indicating a choice as aforesaid;

and the terms of the offer mentioned in paragraph (2) shall be determined accordingly.

(4) Paragraph (3) applies whether or not any time#limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—

- (a) is not cash and the offeror is no longer able to provide it; or
- (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the chosen consideration.

(5) At the end of 6 weeks from the date of the notice the offeror shall forthwith—

- (a) send a copy of the notice to the company; and
- (b) pay or transfer to the company the consideration for the shares to which the notice relates.

(6) If the shares to which the notice relates are registered the copy of the notice sent to the company under paragraph (5)(a) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror; and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(7) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments the copy of the notice sent to the company under paragraph (5)(a) shall be accompanied by a statement to that effect; and the company shall on receipt of the statement

issue the offeror with warrants or other instruments in respect of the shares and those already in issue in respect of the shares shall become void.

(8) Where the consideration referred to in sub#paragraph (b) of paragraph (5) consists of shares or securities to be allotted by the offeror the reference in that sub#paragraph to the transfer of the consideration shall be construed as a reference to the allotment of the shares or securities to the company.

(9) Any sum received by a company under sub#paragraph (b) of paragraph (5) and any other consideration received under that sub#paragraph shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other consideration was received.

(10) Any sum received by a company under sub#paragraph (b) of paragraph (5), and any dividend or other sum accruing from any other consideration received by a company under that sub#paragraph, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(11) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of paragraph (9) cannot be found and 12 years have elapsed since the consideration was received or the company is wound up the consideration (together with any interest, dividend or other benefit that has accrued from it) shall be paid into the Insolvency Account.

(12) The costs of any such enquiry as is mentioned in paragraph (11) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

Right of minority shareholder to be bought out by offeror

423A.—(1) If a takeover offer relates to all the shares in a company and at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire, amount to not less than nine#tenths in value of all the shares in the company,

the holder of any shares to which the offer relates who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

(2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and
- (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire, amount to not less than nine#tenths in value of all the shares of that class,

the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

(3) Within one month of the time specified in paragraph (1) or, as the case may be, paragraph (2) the offeror shall give any shareholder who has not accepted the offer notice in the prescribed manner of the rights that are exercisable by him under that paragraph; and if the notice is given before the end of the period mentioned in that paragraph shall state that the offer is still open for acceptance.

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(4) A notice under paragraph (3) may specify a period for the exercise of the rights conferred by this Article and in that event the rights shall not be exercisable after the end of that period; but no such period shall expire within 3 months from the expiration of the period within which the offer can be accepted.

(5) Paragraph (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under Article 422.

(6) If the offeror fails to comply with paragraph (3) he and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, shall be liable to a fine and, for continued contravention, to a daily default fine.

(7) If an offeror other than a company is charged with an offence for failing to comply with paragraph (3) it is a defence for him to prove that he took all reasonable steps for securing compliance with that paragraph.

Effect of requirement under Article 423A

423B.—(1) The following provisions shall, subject to Article 423C, have effect where a shareholder exercises his rights in respect of any shares under Article 423A.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the holder of shares a choice of consideration the holder of the shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under Article 423A(3)—

- (a) shall give particulars of the choice and of the rights conferred by this paragraph; and
- (b) may state which consideration specified in the offer is to be taken as applying in default of his indicating a choice;

and the terms of the offer mentioned in paragraph (2) shall be determined accordingly.

(4) Paragraph (3) applies whether or not any time#limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—

- (a) is not cash and the offeror is no longer able to provide it; or
- (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the chosen consideration.

Applications to the court

423C.—(1) Where a notice is given under Article 422 to the holder of any shares the court may, on an application made by him within 6 weeks from the date on which the notice was given,—

- (a) order that the offeror shall not be entitled and bound to acquire the shares; or
- (b) specify terms of acquisition different from those of the offer.

(2) If an application to the court under paragraph (1) is pending at the end of the period mentioned in paragraph (5) of Article 423 that paragraph shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his rights under Article 423A the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(4) No order for costs shall be made against a shareholder making an application under paragraph (1) or (3) unless the court considers—

- (a) that the application was unnecessary, improper or vexatious; or
- (b) that there has been unreasonable delay in making the application or unreasonable conduct on his part in conducting the proceedings on the application.

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under paragraph (1) or (2) of Article 422 the court may, on the application of the offeror, make an order authorising him to give notices under that paragraph if satisfied—

- (a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates;
- (b) that the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the offer, together with the shares held by the person or persons mentioned in sub#paragraph (a), amount to not less than the minimum specified in that paragraph; and
- (c) that the consideration offered is fair and reasonable;

but the court shall not make an order under this paragraph unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

Joint offers

423D.—(1) A takeover offer may be made by 2 or more persons jointly and in that event this Part has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by Articles 422 and 423A shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and obligations of the offeror under those Articles and Articles 423 and 423B shall be respectively joint rights and joint and several obligations of the joint offerors.

(3) It shall be a sufficient compliance with any provision of those Articles requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the statutory declaration required by Article 422(4) shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(4) In Articles 421, 423(8) and 423E references to the offeror shall be construed as references to the joint offerors or any of them.

(5) In Article 423(6) and (7) references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

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(6) In Articles 423(4)(a) and 423B(4)(a) references to the offeror being no longer able to provide the relevant consideration shall be construed as references to none of the joint offerors being able to do so.

(7) In Article 423C references to the offeror shall be construed as references to the joint offerors except that any application under paragraph (3) or (5) may be made by any of them and the reference in paragraph (5)(a) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

Associates

423E.—(1) The requirement in Article 421(1) that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to paragraph (2), shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part to the shares to which a takeover offer relates.

(2) Where during the period within which a takeover offer can be accepted any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then, if the condition specified in paragraph (8)(a) or (b) of Article 422 is satisfied as respects those shares they shall be treated for the purposes of that Article as shares to which the offer relates.

(3) In Article 423A(1)(b) and (2)(b) the reference to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his has acquired or contracted to acquire.

(4) In this Article “associate”, in relation to an offeror means—

- (a) a nominee of the offeror;
- (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
- (c) a body corporate in which the offeror is substantially interested; or
- (d) any person who is, or is a nominee of, a party to an agreement with the offeror for the acquisition of, or of an interest in, the shares which are the subject of the takeover offer, being an agreement which includes provisions imposing obligations or restrictions such as are mentioned in Article 212(2)(a).

(5) For the purposes of paragraph (4)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(6) For the purposes of paragraph (4)(c) an offeror has a substantial interest in a body corporate if—

- (a) that body or its directors are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

(7) Paragraphs (5) and (6) of Article 212 shall apply to paragraph (4)(d) of this Article as they apply to that Article and paragraphs (3) and (4) of Article 211 shall apply for the purposes of paragraph (6) of this Article as they apply for the purposes of paragraph (2)(b) of that Article.

(8) Where the offeror is an individual his associates shall also include his spouse and any minor child or step#child of his.

Convertible securities

423F.—(1) For the purposes of this Part securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares; and references to the holder of shares or a shareholder shall be construed accordingly.

(2) Paragraph (1) shall not be construed as requiring any securities to be treated—

- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or
- (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.”.

(2) Paragraph (1) does not affect any case in which the offer in respect of the scheme or contract mentioned in Article 421 was made before the coming into operation of this Article.

Arts. 27#34 rep. by 1993 c.36; S.I. 2007/2194, arts. 1(3)(a), 10(3), Sch. 5 (with art. 12)

Offences

35.—(1) In Schedule 23 to the Companies Order (punishment of offences) after the entry relating to Article 420(5) there shall be inserted—

“422(6)	Offeror failing to send copy of notice of making statutory declaration knowing it to be false, etc.	<ol style="list-style-type: none"> 1. On indictment. 2. Summary. 	2 years or a fine; or both. 6 months or the statutory maximum; or both.	One#fiftieth of the statutory maximum.
423A(6)	Offeror failing to give notice of rights to minority shareholder.	<ol style="list-style-type: none"> 1. On indictment. 2. Summary. 	A fine. The statutory maximum.	One#fiftieth of the statutory maximum.” .

Paras.(2)(3) rep. by 1993 c.36

Amendments

Para. (1)—Amendments

(2) The Banking Act 1987^{F6} shall have effect subject to the amendments specified in Part II of Schedule 4 being amendments consequential on the provisions of this Part.

F6 1987 c. 22

Article 37—Repeals

Status: Point in time view as at 01/01/2006.

Changes to legislation: There are currently no known outstanding effects for the
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Schedules 1—3 rep. by 2002 NI 4

Schedule 4—Amendments

Schedule 5—Repeals

Status:

Point in time view as at 01/01/2006.

Changes to legislation:

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