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STATUTORY RULES OF NORTHERN IRELAND

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**1991 No. 26 (C.2)**

**COMPANIES**

**Companies (1990 No. 2 Order) (Commencement  
No. 1) Order (Northern Ireland) 1991**

*Made - - - - 5th February 1991*

The Department of Economic Development, in exercise of the powers conferred on it by Article 1 of the Companies (No. 2) (Northern Ireland) Order 1990<sup>(1)</sup> and paragraph 2(1) of Schedule 1 to the Northern Ireland Act 1974<sup>(2)</sup> and of every other power enabling it in that behalf, hereby makes the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Companies (1990 No. 2 Order) (Commencement No. 1) Order (Northern Ireland) 1991.

(2) In this Order “the 1986 Order” means the Companies (Northern Ireland) Order 1986<sup>(3)</sup> and “the 1990 (No. 2) Order” means the Companies (No. 2) (Northern Ireland) Order 1990.

**Provisions of Parts I and II of the 1990 (No. 2) Order brought into operation by this Order**

2.—(1) The provisions of Article 1 of the 1990 (No. 2) Order, insofar as they are not already in operation, and Article 2 of that Order shall come into operation on 11th March 1991.

(2) In Part II of the 1990 (No. 2) Order, Articles 3 to 7 and 9 to 27, shall come into operation on 11th March 1991:—

- (a) except for Article 13(2)(g) thereof to the extent that it refers to a body established by order under Article 48 of the Companies (Northern Ireland) Order 1990<sup>(4)</sup>, and
- (b) except to the extent that Articles 13(2), 24 and 25(2) thereof refer to Part V of the 1990 (No. 2) Order.

**Provisions of Part IV of the 1990 (No. 2) Order brought into operation by this Order**

3. In Part IV of the 1990 (No. 2) Order the following provisions shall come into operation on 11th March 1991:—

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(1) S.I.1990/1504 (N.I. 10)  
(2) 1974 c. 28  
(3) S.I. 1986/1032 (N.I. 6)  
(4) S.I. 1990/593 (N.I. 5)

- (a) Articles 48 to 58, subject, in the case of Articles 50 and 53 to 58, to the transitional and saving provisions set out in Article 4;
- (b) Article 66, subject to the saving provision set out in Article 5;
- (c) Article 67;
- (d) Article 69(1), (2), (3), (5) and (6), subject to the transitional and saving provisions set out in Article 6;
- (e) Article 71, subject to the transitional provision set out in Article 7;
- (f) Article 72—
  - (i) paragraph (1);
  - (ii) paragraph (2) for the purposes of a directors' report of a company (within the meaning of Article 3 of the 1986 Order) but subject to the transitional provision set out in Article 8;
- (g) Article 75, and
- (h) paragraphs 8, 9, 12 and 14 to 17 of Schedule 5 and Article 78 insofar as it extends to those paragraphs.

#### **Transitional and saving provisions relating to Articles 50 and 53 to 58 of the 1990 (No. 2) Order**

4. Articles 50 and 53 to 58 of the 1990 (No. 2) Order shall have effect subject to the transitional and saving provisions set out in the Schedule.

#### **Saving provision relating to Article 66 of the 1990 (No. 2) Order**

5. The insertion of the new Article 121A into the 1986 Order by Article 66 of the 1990 (No. 2) Order shall not be construed as affecting any right, privilege, obligation or liability acquired, accrued or incurred prior to the commencement of Article 66 by this Order.

#### **Transitional and saving provisions relating to Article 69 of the 1990 (No. 2) Order**

6.—(1) Where in consequence of the coming into operation of Article 69(2) of the 1990 (No. 2) Order a person's interest in the shares of a company becomes notifiable, and he is or becomes aware that he has such an interest,

- (a) then he comes under an obligation to make notification to the company in respect of it, and
- (b) the obligation must be performed within the period of 2 days next following the day on which he is or becomes so aware,

and the provisions of Part VII of the 1986 Order apply as if that obligation arose under Article 206 of that Order.

(2) Any day that is a Saturday or Sunday or a bank holiday (as defined in Article 2(3) of the 1986 Order) is to be disregarded in reckoning the period of 2 days referred to in paragraph (1)(b).

(3) The coming into operation of Article 69(3) of the 1990 (No. 2) Order does not affect the time for fulfilling any obligation which arose before 11th March 1991.

#### **Transitional provision relating to Article 71 of the 1990 (No. 2) Order**

7.—(1) This Article applies where a body corporate has changed the situation of its registered office prior to the coming into operation of Article 71 of the 1990 (No. 2) Order (which substitutes a new Article 295 of the 1986 Order for the old Article 295 thereof) but has not given notice of the

change in the prescribed form to the registrar as required by paragraph (2) of the old Article 295 of the 1986 Order.

(2) Where this Article applies, paragraphs (2) and (3) of the old Article 295 shall continue to have effect.

#### **Transitional provision relating to Article 72(2) of the 1990 (No. 2) Order**

8. The new paragraph 5A inserted by Article 72(2) of the 1990 (No. 2) Order into Part I of Schedule 7 to the 1986 Order shall not have effect for a director's report of a company for a financial year commencing on a date prior to 1st April 1990.

#### **Saving for the Interpretation Act (Northern Ireland) 1954**

9. Nothing in Articles 4 or 7 of, or the Schedule to, this Order is to be taken as prejudicing the application of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954(5).

#### **Repeals**

10.—(1) In Part VI of the 1990 (No. 2) Order the repeals effected by Schedule 6 in or of:

- (a) Articles 2(2), 209, 210(1), 217(1)(h), 428, 439(3), 440(1), 442(1), 445(1)(b), 602(1), 665(2), 666(1) of and Schedules 4, 9 and 23 (except insofar as Schedule 6 repeals the entries relating to Articles 372(4), 373(3) and 397(9)) to the 1986 Order (subject to paragraph (2));
- (b) paragraph 37 of Schedule 16 to the Financial Services Act 1986(6);
- (c) Article 24 of and paragraph 9 of Schedule 4 to the Companies (Northern Ireland) Order 1989(7);
- (d) paragraph 19 of Schedule 9 to the Insolvency (Northern Ireland) Order 1989(8), and
- (e) Schedules 10 and 15 to the Companies (Northern Ireland) Order 1990(9),

together with Article 113 so far as relating to those repeals shall come into operation on 11th March 1991.

(2) Where paragraph (1) states that a repeal is subject to this paragraph, that repeal is to be subject to any relevant transitional or saving provisions made by any provision of this Order.

Sealed with the Official Seal of the Department of Economic Development on

5th February 1991.

*A. H. McAlister*  
Assistant Secretary

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(5) 1954 c. 33 (N.I.)  
(6) 1986 c. 60  
(7) S.I. 1989/2404 (N.I. 18)  
(8) S.I. 1989/2405 (N.I. 19)  
(9) S.I. 1990/593 (N.I. 5)

## SCHEDULE

Article 4

## Transitional Provisions relating to Articles 50 and 53 to 58 of the 1990 (No. 2) Order

**Interpretation**

1. For the purposes of this Schedule, “the unamended 1986 Order” means the provisions of the 1986 Order prior to their amendment by the provisions of the Companies (Northern Ireland) Order 1990 or the 1990 (No. 2) Order, “the amended 1986 Order” means the provisions of the 1986 Order subject to any amendments made by the Companies (Northern Ireland) Order 1990 or the 1990 (No. 2) Order, “relevant financial year” means a financial year of a company commencing prior to 1st April 1990, and other expressions have the same meaning as in the amended 1986 Order.

## Elective Resolutions

**Transitional provisions relating to annual returns where an election to dispense with an annual general meeting is in force**

2.—(1) This paragraph applies where an election is in force, under the provisions of Article 374A of the amended 1986 Order<sup>(10)</sup>, to dispense with the holding of annual general meetings, at a time when Articles 371 to 373 of the amended 1986 Order<sup>(11)</sup> are not in operation.

(2) Where this paragraph applies:

- (a) Article 373 of the unamended 1986 Order shall apply as if paragraph (1) thereof required the company’s annual return for a year to be completed by a date not later than 42 days after the latest date by which the company would have been required to hold an annual general meeting in the absence of the resolution under Article 374A of the amended 1986 Order, and
- (b) paragraph 5(a) of Schedule 15 to the 1986 Order shall apply as if the words “on the fourteenth day after the company’s annual general meeting for the year” read “on a date not more than 28 days prior to the date on which the company’s annual return is completed”.

## Auditors

**General transitional and saving provisions relating to Articles 53 to 58**

3.—(1) The provisions of this paragraph have effect, in addition to the provisions of the Interpretation Act (Northern Ireland) 1954, for securing the continuity of the law so far as Articles 53 to 58 of the 1990 (No. 2) Order re-enact (with or without modification) provisions of Articles 392 to 401 of the unamended 1986 Order.

(2) References (express or implied) in any statutory provision to any provision of new Articles 392 to 401B inserted by Articles 53 to 58 of the 1990 (No. 2) Order shall, so far as the context permits, be construed as including a reference to the corresponding provision of Articles 392 to 401 of the unamended 1986 Order.

(3) Where an offence has been committed for the continuance of which a penalty was provided for under any provision of Articles 392 to 401 of the unamended 1986 Order, proceedings may be taken under the corresponding provision of new Articles 392 to 401B inserted by Articles 53 to 58 of the 1990 (No. 2) Order in respect of the continuance of the offence on and after 11th March 1991 in the like manner as if the offence had been committed under the corresponding provision.

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<sup>(10)</sup> Article 374A is inserted by Article 50(2) of the 1990 (No. 2) Order

<sup>(11)</sup> Articles 371 to 373 of the amended 1986 Order are inserted into the 1986 Order by Article 74(1) of the 1990 (No. 2) Order

(4) Where any period of time specified in any provision of Articles 392 to 401 of the unamended 1986 Order is current immediately prior to 11th March 1991, and there is a corresponding provision in new Articles 392 to 401B inserted by Articles 53 to 58 of the 1990 (No. 2) Order, those new Articles shall have effect as if that corresponding provision had been in operation when that period began to run.

(5) The provisions of this paragraph have effect subject to any specific transitional or saving provisions made by this Order.

#### **Transitional provisions having effect in relation to a relevant financial year of a company**

4. References in Articles 393A, 396A(4), 401 and 401A (inserted by Articles 54(1), 57(1) and 58(1) of the 1990 (No. 2) Order) to Article 246 shall be construed, with respect to a relevant financial year of a company, as references to Article 248 of the unamended 1986 Order.

5. New Article 393A, inserted by Article 54(1) of the 1990 (No. 2) Order, shall have effect with respect to a relevant financial year of a company as if the references therein to the company's annual accounts and first annual accounts were to the documents referred to in Article 247(a) and (d) of the unamended 1986 Order.

6. New Article 394(2), inserted by Article 54(1) of the 1990 (No. 2) Order, shall have effect with respect to a relevant financial year of a company as if the reference to Article 258 was a reference to Article 260 of the unamended 1986 Order.

7. New Article 396A(1) and (3), inserted by Article 54(1) of the 1990 (No. 2) Order, shall not apply with respect to a relevant financial year of a company and:

- (a) the reference in Article 392 to that Article shall be construed, with respect to such a year, as a reference to Article 260 of the unamended 1986 Order, and
- (b) Articles 396A(4), and 396A(2) and (5) so far as they relate to Article 396A(4), shall apply with respect to a loss of an exemption under Article 260 of the unamended 1986 Order.

8. New Article 397A, inserted by Article 55(1) of the 1990 (No. 2) Order, shall have effect with respect to a relevant financial year of a company as if the references therein to a "parent company" or "subsidiary undertaking" included references to a "holding company" or a "subsidiary" respectively, within the meaning of Article 4 of the 1986 Order as unamended by the 1990 (No. 2) Order.

9. New Article 398A(3), inserted by Article 56 of the 1990 (No. 2) Order, shall not apply with respect to a relevant financial year of a company.

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#### **EXPLANATORY NOTE**

*(This note is not part of the Order.)*

This Order brings into operation on 11th March 1991 certain of the provisions of the Companies (No. 2) (Northern Ireland) Order 1990 ("the 1990 (No. 2) Order").

Article 2(2) brings into operation all the provisions of Part II of the 1990 (No. 2) Order with the exception of Article 8, which relates to provisions of the Insolvency (Northern Ireland) Order 1989 which are not yet in operation, references to a body established by Order under Article 48 of the

Companies (Northern Ireland) Order 1990 and references to provisions of Part V of the 1990 (No. 2) Order (Financial Markets and Insolvency).

Article 3 brings into operation, in Part IV of the 1990 (No. 2) Order (Other amendments of company law), Articles 48 to 52 (De-regulation of private companies), Articles 53 to 58 (Appointment and removal of auditors and related matters), Article 66 (Members' rights to damages, etc.), Article 67 (Financial assistance for purposes of employees' share scheme), Article 69 (with the exception of paragraph 4) (Disclosure of interests in shares), Article 71 (A company's registered office), Article 72 (Effecting of insurance for officers and auditors of company), Article 75 (Application to declare dissolution of company void) and certain minor amendments made by Article 78 and Schedule 5. These minor amendments are those made by paragraphs 8 (Transactions with directors not requiring authorisation), 9 (Time limit for holding extraordinary general meeting convened on members requisition), 12 (Requirements for registration by joint stock companies), 14 and 15 (Exemptions from limit of 20 on members of partnership), 16 (Meaning of "officer who is in default") and 17 (Fraudulent trading by unregistered companies) of Schedule 5. Articles 4 to 8 set out certain transitional or saving provisions relating to Articles 50, 53 to 58, 66, 69, 71 and 72 of the 1990 (No. 2) Order.

Article 10 brings into operation the provisions of Article 113 of and Schedule 6 to the 1990 (No. 2) Order which set out the repeals of statutory provisions made by that Order to the extent that they relate to the other provisions of the 1990 (No. 2) Order brought into operation by this Order on the date those provisions come into operation.