

SCHEDULE 3

Article 5

AMENDMENTS OF EARLIER COMMENCEMENT ORDERS

**Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194 (C. 84))**

1.—(1) As from 1st October 2008—

(a) the transitional adaptations of sections 205 and 234 of the Companies Act 2006 by paragraphs 11 and 12 of Schedule 1 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 cease to have effect, and

(b) those sections have effect instead with the following adaptation.

(2) In section 205(5) and section 234(6), for the words from “section 661(3)” to “innocent nominee)” substitute “section 144(3) or (4) of the Companies Act 1985 or Article 154(3) or (4) of the Companies (Northern Ireland) Order 1986 (acquisition of shares by innocent nominee)”.

2.—(1) Schedule 3 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (transitional provisions and savings) is amended as follows.

(2) After paragraph 26 (notice of meetings) insert—

“**26A.**—(1) The following provisions have effect for the purposes of section 307(6)(a) of the Companies Act 2006 (private company: requisite percentage for calling general meeting at short notice).

(2) If immediately before 1st October 2007 there was in force in relation to a company a resolution under section 369(4) of the 1985 Act or Article 377(4) of the 1986 Order—

(a) specifying 90%, or

(b) under which the company in general meeting had determined that the percentage should be 90%,

any provision of the company’s articles specifying a higher percentage shall be disregarded.

(3) If immediately before 1st October 2007 there was in force in relation to a company a resolution under section 369(4) of the 1985 Act or Article 377(4) of the 1986 Order—

(a) specifying a percentage greater than 90% but less than 95%, or

(b) under which the company in general meeting had determined a percentage greater than 90% but less than 95%,

any provision of the company’s articles specifying a different percentage shall be disregarded.

(4) Sub-paragraph (2) or (3) does not apply in relation to provisions of the company’s articles adopted on or after 1st October 2007.”

(3) In paragraph 48 (company investigations), for “1035 to 1039” substitute “1035 to 1037 and 1038(1)”.

**Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (S.I. 2007/3495 (C. 150))**

3. In article 9(4) of the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007, insert “the” before “1985”.

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4. The revocation by article 10(1)(b) of the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 of paragraph 15(2) of Schedule 1 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (transitional adaptation: period within which public company must hold AGM) does not have effect in relation to a company until—

- (a) the directors of the company have complied with section 241 of the Companies Act 1985<sup>(1)</sup> or Article 249 of the Companies (Northern Ireland) Order 1986<sup>(2)</sup> in respect of the last financial year of the company beginning before 6th April 2008, or
- (b) the first financial year of the company beginning on or after that date comes to an end.

5. In Schedule 1 to the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (transitional adaptations), omit paragraphs 1 and 2 (so that those paragraphs do not come into force on 6th April 2008).

6.—(1) Schedule 4 to the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (transitional provisions and savings) is amended as follows.

(2) In paragraph 2(2) (retention of particulars removed from register of members), for “2008” substitute “2018”.

(3) In paragraph 35(2)(c)(ii), insert “section” before “233”.

(4) In paragraph 38(3) (statutory auditors: saving for approval of overseas qualifications), after “1989 or” insert “by the Department of Enterprise, Trade and Investment in force under”.

(5) For paragraph 43 (expenses of winding up) substitute—

“43.—(1) The amendment made to the Insolvency Act 1986<sup>(3)</sup> by section 1282(1) of the Companies Act 2006 (expenses of winding up) applies—

- (a) to a creditors’ voluntary winding up—
  - (i) for which the resolution is passed, or
  - (ii) where commenced as a members’ voluntary winding up, for which the conversion to a creditors’ voluntary winding up under section 96 of the Insolvency Act 1986 takes effect, or
  - (iii) in respect of which a notice is registered under paragraph 83 of Schedule B1 to the Insolvency Act 1986,  
on or after 6th April 2008;
- (b) to a members’ voluntary winding up for which the resolution is passed on or after 6th April 2008;
- (c) to the winding up of a company by the court where the winding-up order is made on or after 6th April 2008, except where the order is made following a resolution for voluntary winding up passed by the company before 6th April 2008.

(2) The amendment made to the Insolvency (Northern Ireland) Order 1989<sup>(4)</sup> by section 1282(2) of the Companies Act 2006 (expenses of winding up) applies—

- (a) to a creditors’ voluntary winding up—
  - (i) in respect of which the resolution is passed, or

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(1) Section 241 was substituted by section 11 of the Companies Act 1989 (c.40).

(2) Article 249 was substituted by Article 13 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/595 (N.I. 5)).

(3) 1986 c.45.

(4) S.I. 1989/2405 (N.I. 19).

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- (ii) where it commenced as a members' voluntary winding up, for which the conversion to a creditors' voluntary winding up under Article 82 of the Order takes effect, or
  - (iii) in respect of which a notice is registered under paragraph 84 of Schedule B1 to the Order,  
on or after 6th April 2008;
  - (b) to a members' voluntary winding up for which the resolution is passed on or after 6th April 2008;
  - (c) to the winding up of a company by the court where the winding-up order is made on or after 6th April 2008, except where the order is made following a resolution for voluntary winding up passed by the company before 6th April 2008."
- (6) The amendments in this paragraph come into force at the same time as the provision amended.

7. In Schedule 5 to the Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007 (amendments of earlier commencement orders), in paragraph 2(2) for "2006" substitute "1985".