

## SCHEDULE 1

Article 5(1)

### PROVISIONS RELATING TO OLD PUBLIC COMPANIES

#### **Meaning of “old public company”**

1. For the purposes of this Schedule an “old public company” is a company limited by shares, or a company limited by guarantee and having a share capital, in respect of which the following conditions are met—

- (a) the company either existed on 22nd December 1980 or was incorporated after that date pursuant to an application made before that date,
- (b) on that date or, if later, on the day of the company’s incorporation, the company was not or (as the case may be) would not have been a private company within the meaning of section 28 of the Companies Act 1948(1), and
- (c) the company has not since that date or the day of the company’s incorporation (as the case may be) either been re-registered as a public company within the meaning of section 1(3) of the Companies Act 1985 or section 4(2) of the Companies Act 2006 or become a private company within the meaning of section 1(3) of the Companies Act 1985 or section 4(1) of the Companies Act 2006.

#### **Application of Companies Acts to old public companies**

2.—(1) References in the Companies Acts to—

- (a) a public company, or
- (b) a company other than a private company,

are to be read (unless the context otherwise requires) as including an old public company.

(2) References in the Companies Acts to a private company are to be read accordingly.

(3) Sub-paragraphs (1) and (2)—

- (a) do not apply in relation to—
  - (i) Part 7 of the Companies Act 2006 (re-registration as a means of altering a company’s status), and
  - (ii) sections 662 to 669 of that Act (treatment of shares held by or for public company) (see paragraph 7(1) and (2) below), and
- (b) do not restrict the power to make provision by regulations under section 65 of that Act (inappropriate use of indications of company type or legal form).

#### **Old public company re-registering as a public company**

3.—(1) Sections 90 to 96 of the Companies Act 2006 (re-registration as public company limited by shares) apply to an old public company.

(2) As they so apply—

- (a) references to a private company shall be read as references to an old public company, and
- (b) references to a special resolution of the company shall be read as references to a resolution of the directors.

(3) Chapter 3 of Part 3 of that Act (resolutions affecting a company’s constitution) applies to any such resolution.

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(1) 1948 c.38.

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(4) References in this Schedule to re-registration as a public company, in relation to an old public company, are to re-registration by virtue of this paragraph.

#### **Old public company becoming private: special resolution**

4.—(1) An old public company may pass a special resolution not to be re-registered as a public company.

(2) Sections 98 and 99 of the Companies Act 2006 (application to court to cancel resolution; notice to registrar of court application or order) apply to such a resolution as they would apply to a special resolution by a public company to be re-registered as private.

(3) If either—

(a) 28 days from the passing of the resolution elapse without an application being made under section 98 of the Companies Act 2006 (as applied), or

(b) such an application is made and proceedings are concluded on the application without the court making an order for the cancellation of the resolution,

the registrar of companies shall issue the company with a certificate stating that it is a private company.

(4) The company then becomes a private company by virtue of the issue of the certificate.

(5) For the purposes of sub-paragraph (3)(b), proceedings on the application are concluded—

(a) except in a case within the following paragraph, when the period mentioned in section 99(3) of the Companies Act 2006 (as applied) for delivering a copy of the court's order on the application to the registrar has expired, or

(b) when the company has been notified that the application has been withdrawn.

(6) A certificate issued to a company under sub-paragraph (3) is conclusive evidence that the requirements of this paragraph have been complied with and that the company is a private company.

#### **Old public company becoming private: statutory declaration**

5.—(1) If an old public company delivers to the registrar a statutory declaration by a director or secretary of the company that the company does not at the time of the declaration satisfy the conditions for the company to be re-registered as public, the registrar shall issue the company with a certificate stating that it is a private company.

(2) The company then becomes a private company by virtue of the issue of the certificate.

(3) A certificate issued to a company under sub-paragraph (1) is conclusive evidence that the requirements of this paragraph have been complied with and that the company is a private company.

#### **Failure by old public company to obtain new classification**

6.—(1) If at any time a company which is an old public company has not delivered to the registrar of companies a declaration under paragraph 5, the company and any officer of it who is in default is guilty of an offence unless at the time the company—

(a) has applied to be re-registered as a public company, and the application has not been refused or withdrawn, or

(b) has passed a special resolution not to be re-registered as a public company, and the resolution has not been revoked, and has not been cancelled under section 98 of the Companies Act 2006, as applied by paragraph 4.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **Old public company holding, or having charge on, own shares**

7.—(1) In sections 662 to 669 of the Companies Act 2006 (treatment of shares held by or for public company) references to a public company do not include an old public company.

(2) Section 668 of that Act (application of sections 662 to 667 to private company re-registering as public company) applies to an old public company as to a private company.

(3) In the case of a company that—

- (a) after 22nd March 1982 remained an old public company, and
- (b) did not before that date apply to be re-registered as a public company,

any charge on its own shares which was in existence on or immediately before that date is a permitted charge and not void under section 670 of the Companies Act 2006.

### **Old public companies: trading under misleading name**

8.—(1) An old public company commits an offence if it carries on a trade, profession or business under a name that includes, as its last part, the words “public limited company” or “cwmni cyfyngedig cyhoeddus”.

(2) Where an offence under this paragraph is committed by a company, an offence is also committed by every officer of the company who is in default.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **Old public companies: payment for share capital**

9. Sections 584 to 587 of the Companies Act 2006 (payment for shares: additional rules for public companies) apply to an old public company whose directors have passed and not revoked a resolution to be re-registered as a public company, as those sections apply to a public company.

## SCHEDULE 2

Article 15

### CONSEQUENTIAL AMENDMENTS TO THE OPEN-ENDED INVESTMENT COMPANIES REGULATIONS 2001

1. The Open-Ended Investment Companies Regulations 2001(2) are amended as follows.
2. In regulation 1 (citation, commencement and extent), for paragraph (3) substitute—

“(3) Except as otherwise provided, these Regulations extend to the whole of the United Kingdom(3).”.
3. In regulation 2(1) (interpretation) —
  - (a) omit the definition of “the 1985 Act” and insert in the appropriate place—

(2) [S.I. 2001/1228](#) as amended by [S.I. 2001/3755](#), [2003/2066](#), [2005/923](#), [2005/2114](#), [2007/1973](#), [2008/948](#), [2009/553](#), [2009/1941](#), [2010/22](#).

(3) [S.I. 2001/1228](#) extends to Northern Ireland by virtue of section 1286(1) of the Companies Act 2006.

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- “the 1989 Order” means the Insolvency (Northern Ireland) Order 1989(4);
- “the 2006 Act” means the Companies Act 2006;”;
- (b) in the definition of “the appropriate registrar”, after paragraph (b) insert—
- “(c) the registrar of companies for Northern Ireland if the company’s instrument of incorporation states that its head office is to be situated in Northern Ireland;”;
- (c) in the definition of “court”, in paragraph (a) after “England and Wales” insert “or Northern Ireland”;
- (d) for the definition of “open-ended investment company” substitute—
- ““open-ended investment company” means—
- (a) a body incorporated by virtue of regulation 3(1), or
- (b) a body treated as so incorporated by virtue of—
- (i) regulation 85(3)(a) (bodies incorporated under earlier British regulations), or
- (ii) Schedule 3 to the Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (transitional provisions: Northern Ireland open-ended investment companies);”.
- 4.** In regulation 13 (particulars of directors)—
- (a) in paragraph (1)(b), for “of Scottish firm” substitute “or firm that is a legal person under the law by which it is governed”;
- (b) in paragraph (4)(c), for “Great Britain” substitute “the United Kingdom”;
- (c) in paragraph (5), for “section 735(1) of the 1985 Act” substitute “section 1 of the 2006 Act”, and for “of the Companies Act 2006” substitute “of that Act”.
- 5.** In regulation 15(3) (requirements for authorisation), for “in England and Wales, Wales or Scotland” substitute “in England and Wales (or Wales), in Scotland or in Northern Ireland”.
- 6.** In regulation 20 (registrar’s index of company names) omit paragraph (2).
- 7.** In regulation 31 (winding up by the court)—
- (a) in paragraph (1)—
- (i) after “Part V of the 1986 Act” insert “or Part 6 of the 1989 Order”, and
- (ii) after “that Act” insert “or that Order”;
- (b) in paragraph (2)—
- (i) for “section 124” substitute “section 124 of the 1986 Act or Article 104 of the 1989 Order”,
- (ii) for “section 124A of the 1986 Act” substitute “section 124A of that Act or Article 104A of that Order”,
- (iii) after “those sections” insert “or Articles”, and
- (iv) after “Part V of that Act” insert “or Part 6 of that Order”;
- (c) in paragraph (4)—
- (i) after “Part V of the 1986 Act” insert “or Part 6 of the 1989 Order”, and
- (ii) in paragraph (a) for “section 129(2) of the 1986 Act” substitute “section 129(2) of that Act or Article 109(2) of that Order”.

8. In regulation 32 (dissolution on winding up by the court)—
  - (a) in paragraph (1)—
    - (i) after “Section 172(8) of the 1986 Act” insert “or Article 146(7) of the 1989 Order”, and
    - (ii) after “Part V of that Act” insert “or Part 6 of that Order”;
  - (b) In paragraph (2) after “section 172(8) of the 1986 Act” insert “or Article 146(7) of the 1989 Order”.
9. In regulation 33(4) (dissolution in other circumstances), for “in England and Wales, or Wales” substitute “in England and Wales (or Wales) or in Northern Ireland”.
10. In regulation 34A(5) (removal of certain directors by ordinary resolution)—
  - (a) in paragraph (2)(a), for “not less than one-tenth” substitute “at least the required percentage”;
  - (b) after paragraph (2), insert—

“(2A) The required percentage is 10% unless more than twelve months has elapsed since the end of the last general meeting—

    - (a) called in pursuance of a members’ requisition under this regulation, or
    - (b) in relation to which the members of the company had (by virtue of an enactment, the company’s instrument of incorporation or otherwise) rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been called at their request,

in which case the required percentage is 5%.”.
11. In regulation 36 (inspection of directors’ service contracts), for paragraph (3)(b) and (c), substitute—
  - (b) a place that is situated in the part of the United Kingdom in which the company is registered, which has been notified to the Authority as being the company’s alternative inspection location.”
12. Omit regulation 41 (exclusion or deemed notice).
13. In regulation 46(8) (share certificates), after “England and Wales” insert “or Northern Ireland”.
14. Omit regulation 50 (power to close register).
15. In regulation 54 (name to appear in correspondence etc)—
  - (a) in paragraph (1), for “have its name mentioned in legible characters” to the end substitute “disclose its name in characters that can be read with the naked eye in all letters of the company, in all other documents issued by the company in the course of business, and on its website.”;
  - (b) omit paragraph (2).
16. In regulation 55 (particulars to appear in correspondence etc), in paragraph (1), for “mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business” substitute “disclosed in characters that can be read with the naked eye in all letters of the company, in all other documents issued by the company in the course of business, and on its websites”.

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(5) Regulation 34A was inserted by [S.I. 2005/923](#).

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**17.** In the heading to regulation 56 (contracts: England and Wales) and in the regulation, after “England and Wales” insert “or Northern Ireland”.

**18.** In the heading to regulation 57 (execution of documents: England and Wales) and in paragraph (1), after “England and Wales” insert “or Northern Ireland”.

**19.—(1)** For the heading to regulation 58 (execution of deeds overseas: England and Wales) substitute “execution of deeds or other documents by attorney”.

(2) In regulation 58—

(a) in paragraph (1)—

(i) after “England and Wales” insert “or Northern Ireland”;

(ii) for “by writing under its common seal” substitute “by instrument executed as a deed”;

(iii) omit the words “in any place elsewhere than in the United Kingdom”;

(b) in paragraph (2), for “has the same effect as if it were executed under the company’s common seal” substitute “has effect as if executed by the company.”

**20.** Omit regulation 59 (authentication of documents: England and Wales).

**21.** In regulation 60 (official seal for share certificates), omit paragraph (3).

**22.** In regulation 61(2)(a), after “England and Wales” insert “or Northern Ireland”.

**23.** In regulation 64 (punishment for fraudulent trading)—

(a) in paragraph (1)(a), for “two” substitute “ten”;

(b) for paragraph (1)(b), substitute—

“(b) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum (or both);

(ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).”.

**24.** In regulation 65 (power to provide for employees on cessation or transfer of business)—

(a) at the beginning of paragraph (3)(b), insert the words “subject to paragraph (4)”;

(b) after paragraph (3), insert—

“(4) A resolution of the directors is not sufficient sanction for payments to or for the benefits of directors, former directors or shadow directors.”.

**25.** In regulation 66 (reports: preparation), omit paragraph (3).

**26.** In regulation 74 (keeping of company records by the Authority)—

(a) in paragraph (1) omit the words “in legible form”;

(b) for paragraph (2) substitute—

“(2) The originals of documents delivered to the Authority under any provision of these Regulations in hard copy form must be kept for three years after they are received by the Authority, after which they may be destroyed provided the information contained in them has been recorded in the register.

(2A) The Authority is under no obligation to keep the originals of documents delivered in electronic form, provided the information contained in them has been recorded in the register.”;

(c) after paragraph (4) insert—

“(5) Paragraphs (2) and (2A) apply to documents held by the Authority when this paragraph comes into force as well as to documents subsequently received.”.

**27.** In regulation 75 (inspection etc of records kept by the Authority)—

(a) for paragraph (1) substitute—

“(1) Any person may inspect the register kept by the Authority for the purposes of this Part of these Regulations, and may require a copy of any material on the register.

(1A) The Authority may specify the form and manner in which an application is to be made for inspection or a copy under paragraph (1).

(1B) Copies of documents required to be registered under regulation 4 must be provided in hard copy or electronic form, as the applicant requests.

(1C) The Authority is not obliged by paragraph (1B) to provide copies in electronic form of a document that was delivered to the Authority in hard copy form if the document was delivered to the Authority on or before 31st December 2006 and ten years or more elapsed between the date of delivery and the date of receipt of the first application for a copy.

(1D) Subject to paragraphs (1B) and (1C), the Authority may determine the form and manner in which copies are to be provided.

(1E) Copies provided under paragraph (1) in hard copy form must be certified as true copies unless the applicant dispenses with such certification.

(1F) Copies provided under paragraph (1) in electronic form must not be certified as true copies unless the applicant expressly requests such certification.”;

(b) in paragraph (2), for “in legible form” substitute “in hard copy form”;

(c) in paragraph (3), for “a copy of or extract from a record kept by the Authority under these Regulations” substitute “a copy provided under this regulation”.

**28.**—(1) In the heading to regulation 76 (provision by the Authority of documents in non-legible form), for “in non-legible form” substitute “in electronic form”.

(2) In regulation 76, for “in any non-legible form it thinks appropriate”, substitute “in electronic form”.

**29.** Omit regulation 79 (exclusion of deemed notice).

**30.** In Schedule 2 (instrument of incorporation), in paragraph 2(a) (statement as to situation of head office) for “in England and Wales, Wales or Scotland” substitute “in England and Wales (or Wales), in Scotland or in Northern Ireland”.

**31.** In Schedule 3 (register of shareholders)—

(a) in paragraph 3(1) after “England and Wales” insert “or Northern Ireland”;

(b) for paragraph 9 (location), substitute—

“**9.** The register of shareholders of a company must be kept available for inspection—

(a) at its head office, or

(b) where an alternative inspection location has been notified to the Authority under regulation 36(3)(b), at that place.”;

(c) omit paragraph 12 (agent’s default).

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**32.** In Schedule 4 (share transfers), in paragraph 5(3)(a) after “Stock Transfer Act 1963” insert “or the Stock Transfer (Northern Ireland) Act 1963<sup>(6)</sup>”.

**33.** In Schedule 6 (mergers and divisions), in paragraph 6(3)—

- (a) in paragraph (e), omit “memorandum and”;
- (b) in paragraph (f), for the words from “section 103” to “allotment)” substitute “section 593 of the 2006 Act (public company: valuation of non-cash consideration for shares)”.

## SCHEDULE 3

Article 31

### TRANSITIONAL PROVISIONS: NORTHERN IRELAND OPEN-ENDED INVESTMENT COMPANIES

#### Main transitional provisions

**1.**—(1) An open-ended investment company that immediately before the date this Order comes into force was incorporated under the Open-Ended Investment Companies Regulations (Northern Ireland) 2004<sup>(7)</sup> (or was treated as so incorporated) is treated on and after that date as incorporated under regulation 3(1) of the Open-Ended Investment Companies Regulations 2001<sup>(8)</sup>.

(2) Anything done (including subordinate legislation made), or having effect as if done, under or for the purposes of any repealed Northern Ireland provision, if in force or effective immediately before the date this Order comes into force, has effect on and after that date as if done under or for the purposes of the corresponding UK provision.

(3) Any reference (express or implied) in any enactment, instrument or document to a UK provision shall be construed (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the corresponding repealed Northern Ireland provision had effect, a reference to that corresponding provision.

(4) Any reference (express or implied) in any enactment, instrument or document to a repealed Northern Ireland provision shall be construed (so far as the context permits), as respects times, circumstances and purposes in relation to which the corresponding UK provision has effect, as being or (according to the context) including a reference to that corresponding provision.

(5) In this paragraph—

“repealed Northern Ireland provision” means—

- (a) any provision of the Open-Ended Investment Companies Act (Northern Ireland) 2002<sup>(9)</sup>,  
or
  - (b) any provision made under that Act that ceased to have effect as from 1st October 2009;
- “UK provision” means section 262 of the Financial Service and Markets Act 2000 and any provision made under that section that on and after the date this Order comes into force extends to the whole of the United Kingdom.

(6) References in sub-paragraph (5) to provision made under an Act include provisions applied by any such provision.

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<sup>(6)</sup> 1963 c.24.

<sup>(7)</sup> S.R. (NI) 2004 No 335.

<sup>(8)</sup> S.I. 2001/1228.

<sup>(9)</sup> 2002 c.13 (N.I.).



## **Applications for authorisation in respect of Northern Ireland Open-Ended Investment Company**

2.—(1) This paragraph applies to applications for an authorisation order in respect of an open-ended investment company whose registered office is to be in Northern Ireland.

(2) The provisions of the Open-Ended Investment Companies Regulations 2001 apply to applications received by the Financial Services Authority on or after the date this Order comes into force.

(3) Any application for an authorisation order under those provisions received by the Authority before that date shall not be considered.

(4) The corresponding provisions of the Open-Ended Investment Companies (Northern Ireland) Regulations 2004 continue to apply to an application for an authorisation order if—

(a) it is received by the Authority, and

(b) the requirements of those Regulations are met in relation to it,

before the date on which this Order comes into force.

(5) Any application for an authorisation order under those Regulations in relation to which the requirements of those Regulations are not met before that date shall be treated as withdrawn.

(6) For the purposes of paragraph 1 above as it applies to treat an open-ended investment company incorporated under the Open-Ended Investment Companies (Northern Ireland) Regulations 2004 as incorporated under the Open-Ended Investment Companies Regulations 2001, an open-ended investment company that is incorporated on an application to which sub-paragraph (4) above applies is treated as if it had been incorporated immediately before the date this Order comes into force.