

# COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY ENTERPRISE) (NORTHERN IRELAND) ORDER 2005

S.I. 2005 1967

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## EXPLANATORY MEMORANDUM

### INTRODUCTION

1. The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (“the Order”) was made on 19 July 2005.
2. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.
3. The Order is intended to modernise company law to: improve regulation of the accountancy profession; make new requirements for company accounts; strengthen the company investigation regime; and make provision for community interest companies. The Order corresponds closely to the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

### BACKGROUND AND POLICY OBJECTIVES

4. The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 will form part of the Government’s strategy to help restore investor confidence in companies and financial markets following major corporate failures, notably in the United States. It is also intended to help the social economy by creating a new type of company – the community interest company (CIC).

### CONSULTATION

5. A number of public consultations have been carried out on the main proposals in the Order. No major issues were identified as a result of the consultation exercises.

### MAIN ELEMENTS OF THE ORDER

6. The Order is divided into three Parts with 60 Articles and 8 Schedules. Part I is introductory. Part II includes provisions relating to the audit and accountancy professions, financial reports, company investigations and directors’ liability. Part III makes provision for community interest companies.

### COMMENTARY ON ARTICLES

#### Part II – Auditors, Accounts, Directors’ Liabilities and Investigations

##### Auditors

7. *Articles 3 and 4* place additional requirements on bodies wishing to be recognised for the purposes of supervising auditors.

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8. *Articles 5 to 7* deal with the delegation of functions by the Department in relation to auditors.
9. *Article 8* sets out circumstances in which the Department may recognise overseas qualifications to allow persons to act as auditor of a company.
10. *Article 9* enables the Department, by regulations, to require companies to publish more information about the types of services they have purchased from their auditors.

#### **ACCOUNTS AND REPORTS**

11. *Articles 10 and 11* strengthen the rights of company auditors to information and require the directors' report to contain a statement that the directors are not aware of any relevant information which has not been disclosed to the auditors.
12. *Articles 12 and 13* give increased powers to the person authorised, currently the Financial Reporting Review Panel (FRRP), to apply to the court to order a company to revise its accounts and provide the FRRP with a statutory power to obtain information but place restrictions on the further disclosure of that information. The persons to whom the FRRP may disclose information and the purposes for which a disclosure may be made are contained in *Schedule 1*.
13. *Articles 14 to 17* enable the Department, by regulations, to specify a body to issue standards relating to directors' reports and allow the Department to contribute to the funding of any body carrying on activities relating to the setting and enforcing of accounting standards. A body which receives such funding will be exempt from liability in respect of these activities.

#### **DIRECTORS' LIABILITIES**

14. *Articles 18 and 19* relax the prohibition on provisions protecting directors from liability and funding of director's expenditure on proceedings against them.

#### **INVESTIGATIONS**

15. *Articles 20 to 23* give the Department or an investigator power to direct a company to produce information or documents, and provide immunity from breach of confidence for anyone who volunteers relevant information. They also give inspectors and investigators power to enter business premises and set out the procedures to be followed by an inspector or investigator when seeking entry to premises.

#### **MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS**

16. *Article 24* gives effect to *Schedule 2 and Schedule 3*.

#### **Part Iii – Community Interest Companies**

17. *Articles 25 to 28* introduce the concept of Community Interest Companies (CICs) and create the offices of the Regulator, Appeal Officer and Official Property Holder. They give effect to *Schedules 4, 5 and 6* which set out the terms of appointment and status of the offices.
18. *Articles 29 to 34 and Schedule 7* set out specific requirements of CICs.
19. *Articles 35 to 38* set out what an organisation must do, in certain circumstances, to become a CIC and prevent a charitable company from becoming a CIC.
20. *Articles 39 to 49 and Schedule 8* set out the Regulator's supervisory and investigatory powers and establish parameters on the exercise of those powers.
21. *Articles 50 to 54* set out what a CIC must do in order to effect a change of status.

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22. *Articles 55 to 60* contain supplementary provisions relating to fees and the terms on which the Regulator will be able to disclose and receive information. They also contain procedural requirements for the making and giving of orders to CICs by the Regulator and define miscellaneous expressions used in Part III of the Order.

**COMMENCEMENT**

23. The provisions in Parts II and III will be brought into operation on a day or days to be appointed by commencement orders.