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STATUTORY INSTRUMENTS

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**2005 No. 1967**

**The Companies (Audit, Investigations and  
Community Enterprise) (Northern Ireland) Order 2005**

**PART III**

**COMMUNITY INTEREST COMPANIES**

*Supervision by Regulator*

**Conditions for exercise of supervisory powers**

**39.**—(1) In deciding whether and how to exercise the powers conferred by Articles 40 to 49 the Regulator must adopt an approach which is based on the principle that those powers should be exercised only to the extent necessary to maintain confidence in community interest companies.

(2) No power conferred on the Regulator by—

- (a) Article 43 (appointment of director),
- (b) Article 44 (removal of director),
- (c) Article 45 (appointment of manager), or
- (d) Article 46 (property),

is exercisable in relation to a community interest company unless the company default condition is satisfied in relation to the power and the company.

(3) The company default condition is satisfied in relation to a power and a company if it appears to the Regulator necessary to exercise the power in relation to the company because—

- (a) there has been misconduct or mismanagement in the administration of the company,
- (b) there is a need to protect the company's property or to secure the proper application of that property,
- (c) the company is not satisfying the community interest test, or
- (d) if the company has community interest objects, the company is not carrying on any activities in pursuit of those objects.

(4) The power conferred on the Regulator by Article 47 (transfer of shares etc.) is not exercisable in relation to a community interest company unless it appears to the Regulator that the company is an excluded company.

**Investigation**

**40.**—(1) The Regulator may—

- (a) investigate the affairs of a community interest company, or
- (b) appoint any person (other than a member of the Regulator's staff) to investigate the affairs of a community interest company on behalf of the Regulator.

(2) Paragraph (1)(b) is in addition to paragraph 4 of Schedule 4 (powers of Regulator exercisable by authorised members of staff) and does not affect the application of that paragraph to the Regulator's power under paragraph (1)(a).

(3) Schedule 8 (further provision about investigations under this Article) has effect.

### **Audit**

**41.**—(1) The Regulator may by order require a community interest company to allow the annual accounts of the company to be audited by a qualified auditor appointed by the Regulator.

(2) A person is a qualified auditor if he is eligible for appointment as a company auditor under Article 28 of the [Companies \(Northern Ireland\) Order 1990 \(NI 5\)](#) (eligibility for appointment as auditor).

(3) Articles 397A and 397B of the 1986 Order (auditor's rights to information) apply in relation to an auditor appointed under this Article as in relation to an auditor appointed under Chapter V of Part XII of that Order.

(4) On completion of the audit the auditor must make a report to the Regulator on such matters and in such form as the Regulator specifies.

(5) The expenses of the audit, including the remuneration of the auditor, are to be paid by the Regulator.

(6) An audit under this Article is in addition to, and does not affect, any audit required by or under any other statutory provision.

### **Civil proceedings**

**42.**—(1) The Regulator may bring civil proceedings in the name and on behalf of a community interest company.

(2) Before instituting proceedings under this Article the Regulator must give written notice to the company stating—

- (a) the cause of action,
- (b) the remedy sought, and
- (c) a summary of the facts on which the proceedings are to be based.

(3) Any director of the company may apply to the court for an order—

- (a) that proposed proceedings are not to be instituted under this Article, or
- (b) that proceedings instituted under this Article are to be discontinued.

(4) On an application under paragraph (3) the court may make such order as it thinks fit.

(5) In particular the court may (as an alternative to ordering that proposed proceedings are not to be instituted under this Article or that proceedings instituted under this Article are to be discontinued) order—

- (a) that the proposed proceedings may be instituted under this Article, or the proceedings instituted under this Article may be continued, on such terms and conditions as the court thinks fit,
- (b) that any proceedings instituted by the company are to be discontinued, or
- (c) that any proceedings instituted by the company may be continued on such terms and conditions as the court thinks fit.

(6) The Regulator must indemnify the company against any costs incurred by it in connection with proceedings brought under this Article.

- (7) Any costs—
  - (a) awarded to the company in connection with proceedings brought under this Article, or
  - (b) incurred by the company in connection with the proceedings and which it is agreed should be paid by a defendant,are to be paid to the Regulator.

### **Appointment of director**

- 43.**—(1) The Regulator may by order appoint a director of a community interest company.
- (2) The person appointed may be anyone whom the Regulator thinks appropriate, other than a member of the Regulator's staff.
- (3) A person may be appointed as a director of a company under this Article—
  - (a) whether or not the person is a member of the company, and
  - (b) irrespective of any provision made by the memorandum or articles of the company or a resolution of the company in general meeting.
- (4) An order appointing a person to be a director of a company under this Article must specify the terms on which the director is to hold office; and those terms have effect as if contained in a contract between the director and the company.
- (5) The terms specified must include the period for which the director is to hold office, and may include terms as to the remuneration of the director by the company.
- (6) A director appointed under this Article has all the powers of the directors appointed by the company (including powers exercisable only by a particular director or class of directors).
- (7) A director appointed under this Article may not be removed by the company, but may be removed by the Regulator at any time.
- (8) Where—
  - (a) a person is appointed to be a director of the company under this Article, or
  - (b) a person so appointed ceases to be a director of the company,the obligation which would otherwise be imposed on the company under Article 296(2) of the 1986 Order (requirement that company notify change among directors to registrar) is instead an obligation of the Regulator.
- (9) But if paragraph (10) applies, Article 296(2) applies as if the period within which the Regulator must send a notification to the registrar of companies is 14 days from the date on which the Regulator receives notification under that paragraph.
- (10) Where a person appointed to be a director of the company under this Article ceases to be a director of the company (otherwise than by removal under paragraph (7)), the company must give notification of that fact to the Regulator in a form approved by the Regulator before the end of the period of 14 days beginning with the date on which the person ceases to be a director.
- (11) If the company fails to comply with paragraph (10) it commits an offence.
- (12) A person guilty of an offence under paragraph (11) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (13) The company may appeal to the Appeal Officer against an order under this Article.

### **Removal of director**

- 44.**—(1) The Regulator may by order remove a director of a community interest company.
- (2) If a person has been removed under paragraph (1)—

- (a) the company may not subsequently appoint him a director of the company, and
  - (b) any assignment to the person of the office of director of the company is of no effect (even if approved by special resolution of the company).
- (3) The Regulator may by order suspend a director of the company pending a decision whether to remove him.
- (4) The maximum period for which a director may be suspended under paragraph (3) is one year.
- (5) If the Regulator suspends a director under paragraph (3) the Regulator may give directions in relation to the performance of the director's functions.
- (6) The Regulator may discharge an order made under paragraph (1).
- (7) The discharge of an order made under paragraph (1) does not reinstate the person removed by the order as a director of the company, but on the discharge of the order paragraph (2) ceases to apply to the person.
- (8) The Regulator must from time to time review any order made under paragraph (3) and, if it is appropriate to do so, discharge the order.
- (9) Before making an order under paragraph (1) or (3) in relation to a director, the Regulator must give at least 14 days' notice to—
- (a) the director, and
  - (b) the company.
- (10) Where an order is made in relation to a director under paragraph (1) or (3) the director may appeal against the order to the High Court.
- (11) The Regulator must, before the end of the period of 14 days beginning with the date on which—
- (a) an order under paragraph (1) is made or discharged,
  - (b) an order under paragraph (3) is made or discharged or expires, or
  - (c) an order under paragraph (1) or (3) is quashed on appeal,
- give notification of that event to the registrar of companies in a form approved by the registrar of companies.
- (12) Where paragraph (11) imposes an obligation to notify the registrar of companies of an event, Article 296(2) of the 1986 Order (requirement that company notify change among directors to registrar) does not apply in respect of the event.

### **Appointment of manager**

- 45.—**(1) The Regulator may by order appoint a manager in respect of the property and affairs of a community interest company.
- (2) The person appointed may be anyone whom the Regulator thinks appropriate, other than a member of the Regulator's staff.
- (3) An order under paragraph (1) may make provision as to the functions to be exercised by, and the powers of, the manager.
- (4) The order may in particular provide—
- (a) for the manager to have such of the functions of the company's directors as are specified in the order, and
  - (b) for the company's directors to be prevented from exercising any of those functions.

(5) In carrying out his functions the manager acts as the company's agent; and a person dealing with the manager in good faith and for value need not inquire whether the manager is acting within his powers.

(6) The appointment of the manager does not affect—

(a) any right of any person to appoint a receiver or manager of the company's property (including any right under Article 42 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#)), or

(b) the rights of a receiver or manager appointed by a person other than the Regulator.

(7) The manager's functions are to be discharged by him under the supervision of the Regulator; and the Regulator must from time to time review the order by which the manager is appointed and, if it is appropriate to do so, discharge it in whole or in part.

(8) In particular, the Regulator must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the company.

(9) The Regulator may apply to the court for directions in relation to any matter arising in connection with the manager's functions or powers.

(10) On an application under paragraph (9) the court may give such directions or make such orders as it thinks fit.

(11) The costs of any application under paragraph (9) are to be paid by the company.

(12) Regulations may authorise the Regulator—

(a) to require a manager to make reports,

(b) to require a manager to give security for the due exercise of the manager's functions, and

(c) to remove a manager in circumstances prescribed by the regulations.

(13) Regulations may—

(a) provide for a manager's remuneration to be payable from the property of the company, and

(b) authorise the Regulator to determine the amount of a manager's remuneration and to disallow any amount of remuneration in circumstances prescribed by the regulations.

(14) The company may appeal to the Appeal Officer against an order under this Article.

## **Property**

**46.—**(1) The Regulator may by order—

(a) vest in the Official Property Holder any property held by or in trust for a community interest company, or

(b) require persons in whom such property is vested to transfer it to the Official Property Holder.

(2) The Regulator—

(a) may order a person who holds property on behalf of a community interest company, or on behalf of a trustee of a community interest company, not to part with the property without the Regulator's consent, and

(b) may order any debtor of a community interest company not to make any payment in respect of the debtor's liability to the company without the Regulator's consent.

(3) The Regulator may by order restrict—

(a) the transactions which may be entered into by a community interest company, or

(b) the nature or amount of the payments that a community interest company may make,

and the order may in particular provide that transactions may not be entered into or payments made without the Regulator's consent.

(4) The vesting or transfer of property under paragraph (1) does not constitute a breach of a covenant or condition against alienation, and no right listed in paragraph (5) operates or becomes exercisable as a result of the vesting or transfer.

(5) The rights are—

- (a) a right of reverter,
- (b) a right of pre-emption,
- (c) a right of forfeiture,
- (d) a right of re-entry,
- (e) an option, and
- (f) any right similar to those listed in sub-paragraphs (a) to (e).

(6) The Regulator must from time to time review any order under this Article and, if it is appropriate to do so, discharge the order in whole or in part.

(7) On discharging an order under paragraph (1) the Regulator may make any order as to the vesting or transfer of the property, and give any directions, which he considers appropriate.

(8) If a person fails to comply with an order under paragraph (1)(b), the Regulator may certify that fact in writing to the court.

(9) If, after hearing—

- (a) any witnesses who may be produced against or on behalf of the alleged offender, and
- (b) any statement which may be offered in defence,

the court is satisfied that the offender failed without reasonable excuse to comply with the order, it may deal with him as if he had been guilty of contempt of the court.

(10) A person who contravenes an order under paragraph (2) or (3) commits an offence, but a prosecution may be instituted only with the consent of the Regulator or the Director of Public Prosecutions for Northern Ireland.

(11) A person guilty of an offence under paragraph (10) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) Paragraphs (8) to (10) do not prevent the bringing of civil proceedings in respect of a contravention of an order under paragraph (1)(b), (2) or (3).

(13) The company and any person to whom the order is directed may appeal to the Appeal Officer against an order under paragraph (1) or (2).

(14) The company may appeal to the Appeal Officer against an order under paragraph (3).

### **Transfer of shares etc.**

**47.**—(1) If a community interest company has a share capital, the Regulator may by order transfer specified shares in the company to specified persons.

(2) If a community interest company is a company limited by guarantee, the Regulator may by order—

- (a) extinguish the interests in the company of specified members of the company (otherwise than as shareholders), and
- (b) appoint a new member in place of each member whose interest has been extinguished.

(3) An order under paragraph (1) may not transfer any shares in respect of which—

- (a) a dividend may be paid, or

- (b) a distribution of the company's assets may be made if the company is wound up.
- (4) An order under this Article in relation to a company—
  - (a) may only transfer shares to, and appoint as new members, persons who have consented to the transfer or appointment, and
  - (b) may be made irrespective of any provision made by the memorandum or articles of the company or a resolution of the company in general meeting.
- (5) The company and any person from whom shares are transferred by the order may appeal to the Appeal Officer against an order under paragraph (1).
- (6) The company and any person whose interest is extinguished by the order may appeal to the Appeal Officer against an order under paragraph (2).
- (7) "Specified", in relation to an order, means specified in the order.

### **Petition for winding up**

**48.**—(1) The Regulator may present a petition for a community interest company to be wound up if the court is of the opinion that it is just and equitable that the company should be wound up.

(2) Paragraph (1) does not apply if the company is already being wound up by the court.

(3) In Article 104 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (application for winding up), after paragraph (5) insert—

“(5A) A winding-up petition may be presented by the Regulator of Community Interest Companies for Northern Ireland in a case falling within Article 48 of the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.”.

### **Dissolution and striking off**

**49.**—(1) If a community interest company has been dissolved, the Regulator may apply under Article 602 of the 1986 Order for an order declaring the dissolution to have been void.

(2) If a community interest company has been struck off the register under Article 603 of the 1986 Order (defunct companies), the Regulator may apply under Article 604(2) of that Order for an order that the company's name be restored.

(3) If an application under Article 603A of the 1986 Order (application to strike name of private company off register) is made on behalf of a community interest company, Article 603B(6) of that Order (persons to be notified of application) is to be treated as also requiring a copy of the application to be given to the Regulator.