

**1990 No. 1707 (C.46)**

**COMPANIES**

**The Companies Act 1989 (Commencement No. 7 and  
Transitional and Saving Provisions) Order 1990**

*Made* - - - - *18th August 1990*

The Secretary of State, in exercise of his powers under section 215(2), (3) and (4) of the Companies Act 1989(a), hereby makes the following Order:

**Citation and Interpretation**

1.—(1) This Order may be cited as the Companies Act 1989 (Commencement No. 7 and Transitional and Saving Provisions) Order 1990.

(2) In this Order:

“the 1985 Act” means the Companies Act 1985(b); and

“the 1989 Act” means the Companies Act 1989.

(3) In articles 4 to 6 of this Order expressions bear the meaning they have in the 1985 Act, unless otherwise stated.

**Provisions of the 1989 Act commenced by this Order**

2. In Part V of the 1989 Act:

(a) section 139 shall come into force on 1st October 1990, subject to the transitional and saving provisions set out in articles 4 and 5 of this Order; and

(b) paragraphs 2 to 7 and 14 of Schedule 19, and section 145 in so far as it relates to those paragraphs, shall come into force on 1st October 1990, subject, in the case of paragraphs 2 and 6, to the transitional and saving provisions set out in article 6 of this Order.

3. In Part X of the 1989 Act, the repeals effected by Schedule 24 in or of:

(a) sections 466(2) and 733(3) of the 1985 Act and Schedules 22 (in so far as Schedule 24 to the 1989 Act effects a repeal in the entry relating to sections 363 to 365) and 24 (in so far as Schedule 24 to the 1989 Act repeals the entry relating to section 365(3)) to the 1985 Act; and

(b) Part I of Schedule 13 to the Insolvency Act 1986(c) (in so far as Schedule 24 to the 1989 Act omits the entry relating to section 733(3)),

together with section 212 so far as relating to those repeals, shall come into force on 1st October 1990.

The repeals effected in Schedules 22 and 24 of the 1985 Act shall come into force subject to the transitional and saving provisions made by articles 4 and 5 of this Order.

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(a) 1989 c.40.

(b) 1985 c.6.

(c) 1986 c.45.

## **Transitional and saving provisions**

### **4. In article 5 of this Order:**

“ the old Chapter III ” means the provisions of Chapter III of Part XI of the 1985 Act, together with the entries relating to the provisions of that Chapter in Schedules 22 and 24 to the 1985 Act, prior to their repeal by sections 139 and 212 (together with Schedule 24) of the 1989 Act;

“ the new Chapter III ” means the new sections 363 to 365 inserted by section 139 of the 1989 Act; and

“ company ” includes any body corporate to which sections 363 to 365 of the 1985 Act are applied by any enactment.

5.—(1) Notwithstanding the commencement of section 139 of the 1989 Act by this Order, the provisions of the old Chapter III shall continue in force for the purposes of the transitional provisions made by this article.

(2) A company which holds an annual general meeting on or after 1st October 1990 but before 1st January 1991 may make an annual return for 1990 in accordance with the provisions of the old Chapter III instead of in accordance with the provisions of the new Chapter III.

(3) A company which has held an annual general meeting for 1990 prior to 1st October 1990 but which is not by that date in default with respect to the delivery of its annual return for 1990 may also make an annual return for 1990 in accordance with the provisions of the old Chapter III instead of in accordance with the provisions of the new Chapter III.

(4) A company to which paragraph 2 of Schedule 4 to the Companies Act 1989 (Commencement No. 4 and Transitional and Saving Provisions) Order 1990(a) applies (a company which elects under section 366A of the 1985 Act(b) not to have an annual general meeting) which is not by 1st October 1990 in default with respect to the delivery of its annual return for 1990 may also make an annual return for 1990 in accordance with the provisions of the old Chapter III instead of in accordance with the provisions of the new Chapter III.

(5) A company able to make a return under paragraphs (2), (3) or (4) above under the old Chapter III shall be deemed to have elected to do so upon the delivery of a return for 1990 in the form prescribed for the purposes of sections 363 and 364 of the 1985 Act by Regulation 4 of, and Schedule 3 to, the Companies (Forms) Regulations 1985(c), or upon the expiry of the time within which it would be required to deliver its first return under the new Chapter III in the absence of this Regulation.

(6) Where a company elects, or is treated as having elected under paragraph (5), to make a return in accordance with paragraphs (2), (3) or (4) then:

(a) in connection with that return, sections 363(7), 364(4) and 365(3) of the old Chapter III shall, without prejudice to the generality of paragraph (1) of this article, continue to be applicable to defaults in complying with sections 363, 364 and 365 respectively of that Chapter;

(b) a return made under the old Chapter III, as continued in force by this article, which complies with the formal and substantive provisions of that Chapter (including those in section 365 requiring the return to be completed and forwarded to the registrar of companies within a certain time) shall be treated, for the purposes of section 363 of the new Chapter III, as a return delivered in accordance with the new Chapter III; and

(c) in connection with that return, the amendment made by section 139(4) of the 1989 Act to Schedule 1 to the Company Directors Disqualification Act 1986(d) shall be treated as not having been made.

(7) Nothing in the new Chapter III shall be construed as requiring a company to deliver an annual return for 1990 to the registrar under that Chapter if the company would, under sections 363(3) or 364(2) of the old Chapter III, have been exempt from making an annual return for 1990.

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(a) S.I. 1990/355.

(b) Section 366A is inserted into the 1985 Act by section 115(2) of the 1989 Act.

(c) S.I. 1985/854.

(d) 1986 c.46.

6.—(1) Where in consequence of the coming into force of paragraph 2 of Schedule 19 to the 1989 Act a company comes under an obligation to amend the particulars of an existing director or shadow director contained in the register of directors required to be kept by section 288 of the 1985 Act, then:

- (a) the company shall not, for the purposes of section 288(4) of the 1985 Act, be in default for a failure to make those amendments unless they have not been made by 1st November 1990; and
- (b) the company need not notify the registrar of companies under section 288(2) of the 1985 Act of those amendments when made.

For the purposes of this paragraph, an “existing” director or shadow director is a director or shadow director of the company who was such a director on 30th September 1990 and “company” includes any body corporate to which section 288 of the 1985 Act is applied by any enactment.

(2) Where an overseas company (other than an overseas company to which section 699 of the 1985 Act applies) has delivered to the registrar of companies a list of directors and secretary under section 691 of the 1985 Act prior to 1st October 1990 (the commencement of paragraph 6 of Schedule 19 to the 1989 Act) it shall, by 1st January 1991, make a return under section 692(1) of the 1985 Act containing the particulars required by section 691(2)(a)(vii) (as inserted by the said paragraph 6) (the date of birth of each director of the company); for the purposes of section 697 of the 1985 Act (penalties for non-compliance) this paragraph shall be treated as a requirement of section 692 of the 1985 Act.

#### **Amendment of the 1985 Act**

7. The section 363 inserted by section 139 of the 1989 Act into the 1985 Act shall be amended, with effect from 1st October 1990, as follows:

- (a) in subsection (5)(a), the words “on or after 1st October 1990” shall be substituted for the words “after the commencement of section 139 of the Companies Act 1989”; and
- (b) in subsection (5)(b), the words “1st October 1990” shall be substituted for the words “that commencement”.

#### **Amendments of earlier Commencement Orders**

8.—(1) Paragraph 2(1) of Schedule 4 to the Companies Act 1989 (Commencement No. 4 and Transitional and Saving Provisions) Order 1990 shall be amended, with effect from 1st October 1990, by the substitution of the words “at a time when sections 363 to 365 of the unamended 1985 Act are in force to any extent” for the words “at a time when sections 363 to 365 of the amended 1985 Act are not in force”.

(2) Article 8 of the Companies Act 1989 (Commencement No. 6 and Transitional and Saving Provisions) Order 1990(a) shall be amended, with effect from 1st October 1990, by the substitution of the following in place of paragraph (b) of that article:

- “(b) in sub-sections (4) and (5), the words “on or after 1st November 1990” shall be substituted for the words “after the commencement of that section” where they appear in those sub-sections.”

18th August 1990

*John Redwood*  
Parliamentary Under-Secretary of State,  
Department of Trade and Industry

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(a) S.I. 1990/1392.

## EXPLANATORY NOTE

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

This Order brings into force certain of the provisions of the Companies Act 1989 (the 1989 Act).

Article 2 of this Order brings into force, with effect from 1st October 1990, section 139 and paragraphs 2 to 7 and 14 of Schedule 19 to the 1989 Act (together with section 145 in so far as it relates to those paragraphs). Section 139 substitutes new provisions on a company's annual return for the existing provisions contained in the Companies Act 1985 (the 1985 Act); it is brought into force subject to the transitional and saving provisions set out in articles 4 and 5 of this Order. Paragraphs 2 to 7 of Schedule 19 make a number of minor amendments to certain provisions of the 1985 Act requiring particulars of directors to be delivered to the registrar of companies or entered into registers kept by the company; paragraphs 2 and 6 are brought into force subject to the transitional and saving provisions made by article 6 of this Order. Paragraph 14 of Schedule 19 substitutes a new provision with respect to the registered numbers of companies for an existing provision of the 1985 Act.

Article 3 of the Order brings into force certain repeals effected by Schedule 24 to, and section 212 of, the 1989 Act.

Articles 4 and 5 of this Order enables a company not due to file an annual return for 1990 before the commencement of section 139 to file, notwithstanding the commencement of that section, an annual return under the existing provisions of the 1985 Act relating to annual returns rather than under the new provisions. (A company which was due to file an annual return for 1990 before the commencement of section 139 but which has not done so remains obliged to file a return under the existing provisions of the 1985 Act relating to annual returns by virtue of section 139(2) of the 1989 Act). Articles 4 and 5 make certain other transitional arrangements necessary for the operation of this arrangement, together with a saving provision maintaining an exemption from the requirement to file an annual return for 1990 applicable to certain companies under those existing provisions.

Article 6(1) of this Order concerns companies which, as a consequence of the coming into force of paragraph 2 of Schedule 19 to the 1989 Act, come under an obligation to amend their register of directors kept under section 288 of the 1985 Act (mainly private companies not being subsidiaries of a public company which must register the dates of birth of their directors). It gives them a period of grace within which to comply and also relieves them of the obligation in section 288(2) to notify the changes made to the registrar of companies. Article 6(2) requires certain overseas companies to make a return to the registrar of companies of the dates of birth of their directors by 1st January 1991.

Articles 7 and 8 make certain minor amendments to the new section 363 of the 1985 Act inserted by section 139 of the 1989 Act and to two earlier Commencement Orders.

95p net

ISBN 0 11 004707 9

Printed in the UK by HMSO

833/WO1630 C46 9/90 3201359 19542