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## STATUTORY INSTRUMENTS

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# 1986 No. 1032

## The Companies (Northern Ireland) Order 1986 (revoked)

### PART II

#### FORMATION AND REGISTRATION OF COMPANIES; JURIDICAL STATUS AND MEMBERSHIP

##### CHAPTER I

##### COMPANY FORMATION

###### *Registration and its consequences*

**F1** Order repealed (prosp.) by [Companies Act 2006 \(c. 46\), ss. 1284\(2\), 1295, 1300\(2\), Sch. 16](#) and the repeal being partly in force, as to which see individual Articles (with savings (with adaptations) by Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3 and 5 (Amendment)) Order 2008 (S.I. 2008/674), arts. 2(3), {4}, Sch. 2) and subject to amendments (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 2\(2\), 3\(1\)\(b\)\(2\), Sch. 1 paras. 135, 147, 148 {Sch. 2 Note 1}](#) (with arts. 6, 11, 12) and subject to amendments (6.4.2008) by [S.R. 2008/133, {regs. 2, 3}](#)

###### *Documents to be sent to registrar*

**21.—**(1) A company's memorandum and articles (if any) shall be delivered to the registrar.

(2) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of—

- (a) the person who is, or the persons who are, to be the first director or directors of the company; and
- (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company;

and the requisite particulars in each case are those set out in Schedule 1.

(3) The statement shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.

(4) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.

(5) An appointment by a company's articles delivered with the memorandum of a person as director or secretary of the company is void unless he is named as a director or secretary in the statement.

(6) There shall in the statement be specified the intended situation of the company's registered office on incorporation.

### **Minimum authorised capital (public companies)**

**22.** When a memorandum delivered to the registrar under Article 21 states that the association to be registered is to be a public company, the amount of the share capital stated in the memorandum to be that with which the company proposes to be registered must not be less than the authorised minimum.

### **Duty of registrar**

**23.—(1)** The registrar shall not register a company's memorandum delivered under Article 21 unless he is satisfied that all the requirements of this Order in respect of registration and of matters precedent and incidental to it have been complied with.

(2) Subject to this, the registrar shall retain and register the memorandum and articles (if any) delivered to him under that Article.

(3) [<sup>F1</sup>Subject to paragraph (4), a statutory declaration] in the prescribed form by—

- (a) a solicitor engaged in the formation of a company, or
- (b) a person named as a director or secretary of the company in the statement delivered under Article 21(2),

that those requirements have been complied with shall be delivered to the registrar and the registrar may accept such a declaration as sufficient evidence of compliance.

[<sup>F1</sup>(4) In place of the statutory declaration referred to in paragraph (3), there may be delivered to the registrar using electronic communications a statement made by a person mentioned in subparagraph (a) or (b) of paragraph (3) that the requirements mentioned in paragraph (1) have been complied with; and the registrar may accept such a statement as sufficient evidence of compliance.

(5) Any person who makes a false statement under paragraph (4) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.]

**F1** SR 2003/3

### **Effect of registration**

**24.—(1)** On the registration of a company's memorandum, the registrar shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited.

(2) The certificate shall be given under the registrar's hand.

(3) From the date of incorporation mentioned in the certificate, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.

(4) That body corporate is then capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets in the event of its being wound up as is provided by this Order [<sup>F2</sup> and the Insolvency Order].

This is subject, in the case of a public company, to Article 127 (additional certificate as to compliance with share capital requirements).

(5) The persons named in the statement under Article 21 as directors, secretary or joint secretaries are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary or joint secretaries.

(6) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation shall contain a statement that the company is a public company.

- (7) A certificate of incorporation given in respect of an association is conclusive evidence—
- (a) that the requirements of this Order in respect of registration and of matters precedent and incidental to it have been complied with, and that the association is a company authorised to be registered, and is duly registered, under this Order; and
  - (b) if the certificate contains a statement that the company is a public company, that the company is such a company.

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### ***Effect of memorandum and articles***

25.—(1) Subject to the provisions of this Order, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) Money payable by a member to the company under the memorandum or articles is a debt due from him to the company.

### ***Memorandum and articles of company limited by guarantee***

26.—(1) In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles, or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, is void.

(2) For the purposes of provisions of this Order relating to the memorandum of a company limited by guarantee, and for those of Article 12(4) and this Article, every provision in the memorandum or articles, or in any resolution, of a company so limited purporting to divide the company's undertaking into shares or interests is to be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by the provision.

### ***Effect of alteration on company's members***

27.—(1) A member of a company is not bound by an alteration made in its memorandum or articles after the date on which he became a member, if and so far as the alteration—

- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or
- (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.

(2) Paragraph (1) operates notwithstanding anything in the memorandum or articles; but it does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

### ***Conditions in memorandum which could have been in articles***

28.—(1) A condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the court.

(2) This Article—

- (a) is subject to Article 27, and also to Part XVIII (court order protecting minority), and

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*Changes to legislation: There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), Cross Heading: Registration and its consequences. (See end of Document for details)*

(b) does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions referred to in paragraph (1), and does not authorise any variation or abrogation of the special rights of any class of members.

(3) Article 16 (except paragraphs (2)(b) and (8)) and Article 17(1) to (3) apply in relation to any alteration and to any application made under this Article as they apply in relation to alterations and applications under Articles 15 to 17.

#### ***Amendments of memorandum or articles to be recorded***

**29.**—<sup>F3</sup>(1) Where an alteration is made in a company's memorandum or articles by any statutory provision, a printed copy of the statutory provision shall, not later than 15 days after that provision comes into operation, be forwarded to the registrar and recorded by him.

(2) Where a company is required (by this Article or otherwise) to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles (other than a special resolution under Article 15) the company shall send with it a printed copy of the memorandum or articles as altered.

(3) If a company fails to comply with this Article, the company and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

<b>F3</b> mod. by SR 1986/305
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#### ***Copies of memorandum and articles to be given to members***

**30.**—(1) A company shall, on being so required by any member, send to him a copy of its memorandum and of its articles (if any), and a copy of any statutory provision which alters the memorandum, subject to payment—

- (a) in the case of a copy of the memorandum and of the articles, of 5 pence or such less sum as the company may determine, and
- (b) in the case of a copy of a statutory provision, of such sum not exceeding its published price as the company may require.

(2) If a company makes default in complying with this Article, the company and every officer of it who is in default is liable for each offence to a fine.

#### ***Issued copy of memorandum to embody alterations***

**31.**—(1) Where an alteration is made in a company's memorandum, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it is liable to a fine, and so too is every officer of the company who is in default.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), Cross Heading: Registration and its consequences.