
STATUTORY INSTRUMENTS

1990 No. 1504

The Companies (No. 2) (Northern Ireland) Order 1990

^{F1}PART III

REGISTRATION OF COMPANY CHARGES

Supplementary provisions

Power to make further provision by regulations

38. The following Article is inserted in Part XIII of the Companies Order—

“Supplementary provisions

Power to make further provision by regulations

417C.—(1) The Department may by regulations make further provision as to the application of the provisions of this Part in relation to charges of any description specified in the regulations.

Nothing in the following provisions shall be construed as restricting the generality of that power.

(2) The regulations may require that where the charge is contained in or evidenced or varied by a written instrument there shall be delivered to the registrar for registration, instead of particulars or further particulars of the charge, the instrument itself or a certified copy of it together with such particulars as may be prescribed.

(3) The regulations may provide that a memorandum of a charge ceasing to affect property of the company shall not be accepted by the registrar unless supported by such evidence as may be prescribed, and that a memorandum not so supported shall be treated as not having been delivered.

(4) The regulations may also provide that where the instrument creating the charge is delivered to the registrar in support of such a memorandum, the registrar may mark the instrument as cancelled before returning it and shall send copies of the instrument cancelled to such persons as may be prescribed.

(5) The regulations may exclude or modify, in such circumstances and to such extent as may be prescribed, the operation of the provisions of this Part relating to the voidness of a charge.

(6) The regulations may require, in connection with the delivery of particulars, further particulars or a memorandum of the charge's ceasing to affect property of the company, the delivery of such supplementary information as may be prescribed, and may—

- (a) apply in relation to such supplementary information any provisions of this Part relating to particulars, further particulars or such a memorandum, and

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- (b) provide that the particulars, further particulars or memorandum shall be treated as not having been delivered until the required supplementary information is delivered.”.

Other supplementary provisions

39. The following Articles are inserted in Part XIII of the Companies Order—

“Date of creation of charge

417D.—(1) References in this Part to the date of creation of a charge by a company shall be construed as follows.

(2) A charge shall be taken to be created—

- (a) in the case of a charge created by an instrument in writing, when the instrument is executed by the company or, if its execution by the company is conditional, upon the conditions being fulfilled, and
- (b) in any other case, when an enforceable agreement is entered into by the company conferring a security interest intended to take effect forthwith or upon the company acquiring an interest in property subject to the charge.

(3) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, any further proceedings necessary to make the charge valid or effectual under the law of the country where the property is situated shall be disregarded in ascertaining the date on which the charge is to be taken to be created.

Prescribed particulars and related expressions

417E.—(1) References in this Part to the prescribed particulars of a charge are to such particulars of, or relating to, the charge as may be prescribed.

(2) The prescribed particulars may, without prejudice to the generality of paragraph (1), include—

- (a) whether the company has undertaken not to create other charges ranking in priority to or *pari passu* with the charge, and
- (b) whether the charge is a market charge within the meaning of Part V of the Companies (No. 2) (Northern Ireland) Order 1990 or a charge to which the provisions of that Part apply as they apply to a market charge.

(3) References in this Part to the registered particulars of a charge at any time are to such particulars and further particulars of the charge as have at that time been duly delivered for registration.

(4) References in this Part to the registered particulars of a charge being complete and accurate at any time are to their including all the prescribed particulars which would be required to be delivered if the charge were then newly created.

Notice of matters disclosed on register

417F.—(1) A person taking a charge over a company's property shall be taken to have notice of any matter requiring registration and disclosed on the register at the time the charge is created.

(2) Otherwise, a person shall not be taken to have notice of any matter by reason of its being disclosed on the register or by reason of his having failed to search the register in the course of making such inquiries as ought reasonably to be made.

(3) The above provisions have effect subject to any other statutory provision as to whether a person is to be taken to have notice of any matter disclosed on the register.

Power of court to dispense with signature

417G.—(1) Where it is proposed to deliver further particulars of a charge, or to deliver a memorandum of a charge ceasing to affect the company's property, and—

(a) the chargee refuses to sign or authorise a person to sign on his behalf, or cannot be found, or

(b) the company refuses to authorise a person to sign on its behalf,

the court may on the application of the company or the chargee, or of any other person having a sufficient interest in the matter, authorise the delivery of the particulars or memorandum without that signature.

(2) The order may be made on such terms as appear to the court to be appropriate.

(3) Where particulars or a memorandum are delivered to the registrar for registration in reliance on an order under this Article, they must be accompanied by an office copy of the order.

In such a case the references in Articles 408 and 410 to the particulars or memorandum being duly signed are to their being otherwise duly signed.

(4) The registrar shall file the office copy of the court order along with the particulars or memorandum.”.

Interpretation, &c.

40. The following Articles are inserted in Part XIII of the Companies Order—

“Regulations

417H. Regulations under any provision of this Part, or prescribing anything for the purposes of any such provision, may contain such transitional provisions as appear to the Department to be appropriate.

Minor definitions

417I.—(1) In this Part—

“chargee” means the person for the time being entitled to exercise the security rights conferred by the charge;

“issue of debentures” means a group of debentures, or an amount of debenture stock, secured by the same charge; and

“series of debentures” means a group of debentures each containing or giving by reference to another instrument a charge to the benefit of which the holders of debentures of the series are entitled *pari passu*.

(2) References in this Part to the creation of a charge include the variation of a charge which is not registrable so as to include property by virtue of which it becomes registrable. The provisions of Article 417D (construction of references to date of creation of charge) apply in such a case with any necessary modifications.

(3) References in this Part to the date of acquisition of property by a company are to the date on which the acquisition is completed.

(4) References in this Part to the beginning of insolvency proceedings are to—

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- (a) the presentation of a petition on which an administration order or winding-up order is made, or
- (b) the passing of a resolution for voluntary winding up.

Index of defined expressions

417J. The following Table shows the provisions of this Part defining or otherwise explaining expressions used in this Part (other than expressions used only in the same Article)—

charge	Articles 402(2) and 403(5)
charge requiring registration	Article 403
chargee	Article 417I(1)
complete and accurate (in relation to registered particulars)	Article 417E(4)
creation of charge	Article 417I(2)
date of acquisition (of property by a company)	Article 417I(3)
date of creation of charge	Article 417D
further particulars	Article 408
insolvency proceedings, beginning of	Article 417I(4)
issue of debentures	Article 417I(1)
memorandum of charge ceasing to affect company's property	Article 410
prescribed particulars	Article 417E(1) and (2)
property	Article 402(2)
registered particulars	Article 417E(3)
registration in relation to a charge	Article 402(4)
relevant event	Article 406(2)
series of debentures	Article 417I(1).”.

Charges on property of company incorporated outside Northern Ireland

41. The provisions set out in Schedule 1 are inserted in Part XXIII of the Companies Order (companies incorporated outside Northern Ireland) as a Chapter III (registration of charges).

Application of provisions to unregistered companies

42. In Schedule 21 to the Companies Order (provisions applying to unregistered companies), at the appropriate place insert—

“Part XIII	Registration of company charges; copies of instruments	Subject to Article 667(3).” .
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and register to be kept by
company.

Article 43—Amendments

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