

1992 No. 405

COMPANIES

**Companies (Single Member Private Limited Companies)
Regulations (Northern Ireland) 1992**

Made 21st September 1992

Coming into operation 19th October 1992

The Department of Economic Development, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to single member private companies limited by shares or by guarantee, in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Single Member Private Limited Companies) Regulations (Northern Ireland) 1992 and shall come into operation on 19th October 1992.

(2) In these Regulations—

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(c), and

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989(d).

(3) The Interpretation Act (Northern Ireland) 1954(e) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Single member private companies limited by shares or by guarantee

2.—(1) Notwithstanding any statutory provision or rule of law to the contrary, a private company limited by shares or by guarantee within the meaning of Article 12 of the 1986 Order may be formed by one person (insofar as permitted by that Article as amended by these Regulations), and may have one member; and accordingly—

(a) any statutory provision or rule of law which applies in relation to a private company limited by shares or by guarantee shall, in the absence of any express provision to the contrary, apply with such modification as may be necessary in relation to such a company which

(a) S.I. 1991/2289

(b) 1972 c. 68

(c) S.I. 1986/1032 (N.I. 6)

(d) S.I. 1989/2405 (N.I. 19)

(e) 1954 c. 33 (N.I.)

is formed by one person or which has only one person as a member as it does in relation to such a company which is formed by two or more persons or which has two or more persons as members; and

- (b) without prejudice to the generality of the foregoing, the 1986 Order and the Insolvency Order shall have effect with the amendments specified in the Schedule.

(2) In this regulation “statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Transitional provision

3. A person who, before the coming into operation of these Regulations, is liable by virtue of Article 34 of the 1986 Order for the payment of the debts of a private company limited by shares or by guarantee, shall not be so liable for the payment of the company’s debts contracted on or after the day on which these Regulations come into operation.

Sealed with the Official Seal of the Department of Economic Development on 21st September 1992.

(L.S.)

R. Gamble

Assistant Secretary

Amendments to the 1986 Order and the Insolvency Order*Formation*

1. In Article 12 of the 1986 Order (mode of forming incorporated company), after paragraph (3) insert—

“(3A) Notwithstanding paragraph (1), one person may, for a lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirements of this Order in respect of registration, form an incorporated company being a private company limited by shares or by guarantee.”.

Minimum membership for carrying on business

2. In Article 34 of the 1986 Order (minimum membership for carrying on business), after “company” where it first occurs insert “, other than a private company limited by shares or by guarantee,”.

Contracts with sole members

3.—(1) In Part XI of the 1986 Order, after Article 330A(a) insert—

“Contracts with sole members who are directors

330B.—(1) Subject to paragraph (2), where a private company limited by shares or by guarantee having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Paragraph (1) shall not apply to contracts entered into the ordinary course of the company’s business.

(3) For the purposes of this Article a sole member who is a shadow director is treated as a director.

(4) If a company fails to comply with paragraph (1), the company and every officer of it who is in default is liable to a fine.

(5) Subject to paragraph (6), nothing in this Article shall be construed as excluding the operation of any other statutory provision or rule of law applying to contracts between a company and a director of that company.

(6) Failure to comply with paragraph (1) with respect to a contract shall not affect the validity of that contract.”.

(2) In Article 9 of the 1986 Order (“director” and “shadow director”), in paragraph (3) after “Article 328 to 330 (substantial property transactions involving directors);” delete “and” and insert “Article 330B (contracts with sole members who are directors); and”.

(3) In Schedule 23 to the 1986 Order (punishment of offences), after the entry relating to Article 326(8) insert—

(a) Article 330A was inserted into the 1986 Order by Article 45 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

<p>“330B(4) Terms of unwritten contract between sole member of a private company limited by shares or by guarantee and the company not set out in a written memorandum or recorded in minutes of a directors’ meeting.</p>	<p>Summary.</p>	<p>A fine of £2,000.”.</p>
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Statement that company has only one member

4.—(1) In Chapter II of Part XII of the 1986 Order, after Article 360 insert—

“Statement that company has only one member

360A.—(1) If the number of members of a private company limited by shares or by guarantee falls to one there shall upon the occurrence of that event be entered in the company’s register of members with the name and address of the sole member—

- (i) a statement that the company has only one member; and
- (ii) the date on which the company became a company having only one member.

(2) If the membership of a private company limited by shares or by guarantee increases from one to two or more members there shall upon the occurrence of that event be entered in the company’s register of members, with the name and address of the person who was formerly the sole member, a statement that the company has ceased to have only one member together with the date on which that event occurred.

(3) If a company makes default in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.”.

(2) In Schedule 23 to the 1986 Order (punishment of offences), after the entry relating to Article 360(5) insert—

<p>“360A(3) Company default in complying with Article 360A (statement that company has only one member).</p>	<p>Summary.</p>	<p>A fine of £10.”. £100.</p>
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Meetings

5. In Chapter IV of Part XII of the 1986 Order, after Article 378 insert—

“Quorum at meetings of the sole member

378A. Notwithstanding any provision to the contrary in the articles of a private company limited by shares or by guarantee having only one member, one member present in person or by proxy shall be a quorum.”.

Recording of decisions by the sole member

6.—(1) In Chapter IV of Part XII of the 1986 Order, after Article 390A(a) insert—

“Recording of decisions by the sole member

390B.—(1) Where a private company limited by shares or by guarantee has only one member and he takes any decision which may be taken by the company in general meeting and which has effect as if agreed by the company in general meeting, he shall (unless that decision is taken by way of a written resolution) provide the company with a written record of that decision.

(a) Article 390A was inserted into the 1986 Order by Article 48(3) of the Companies (No. 2) (Northern Ireland) Order 1990

(2) If the sole member fails to comply with paragraph (1) he shall be liable to a fine.

(3) Failure by the sole member to comply with paragraph (1) shall not affect the validity of any decision referred to in that paragraph.”.

(2) In Schedule 23 to the 1986 Order (punishment of offences), after the entry relating to Article 390(5) insert—

“390B(2) Failure of sole member to provide the company with a written record of decision.	Summary.	A fine of £100.”.
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Registration of single member companies

7. In Article 629 of the 1986 Order (companies capable of being registered under Chapter II of Part XXII), after paragraph (1) insert—

“(1A) A company shall not be prevented from registering under this Order as a private company limited by shares or by guarantee solely because it has only one member.”.

Amendment of the Insolvency Order

8. In Article 102 of the Insolvency Order (circumstances in which company may be wound up by the High Court), in paragraph (1)(e) at the beginning insert “except in the case of a private company limited by shares or by guarantee,”.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations implement Council Directive No. 89/667/EEC on single-member private limited-liability companies (O.J. No. L395, 30.12.1989, p. 40). The Directive requires Member States to provide for the formation of a company having one member and to permit a company to be a single-member company, subject to certain safeguards. In relation to the United Kingdom it applies to private companies limited by shares or by guarantee.

2. Regulation 2 provides that a private company limited by shares or by guarantee may be formed by one person (insofar as permitted by Article 12 of the Companies (Northern Ireland) Order 1986 ("the 1986 Order") as amended by these Regulations) and may have one member. It also provides that any statutory provision or rule of law applying to a private company limited by shares or by guarantee shall, in the absence of any express provision to the contrary, apply with any necessary modification to such a company which has been formed by one person or which has only one member.

3. Without prejudice to the generality of the provisions mentioned in paragraph 2 above, regulation 2(1)(b) also makes specific amendments to the 1986 Order and the Insolvency (Northern Ireland) Order 1989 as set out in the Schedule. The following Articles of the 1986 Order are amended: Article 12 (mode of forming an incorporated company), Article 34 (minimum membership for carrying on business) and Article 629 (companies capable of being registered under Chapter II of Part XXII). The following new provisions are inserted into the 1986 Order: Article 330B (contracts with sole members who are directors), Article 360A (statement that company has only one member), Article 378A (quorum at meetings of the sole member) and Article 390B (recording of decisions by the sole member). Consequential amendments are made to Article 9 of the 1986 Order and to Schedule 23 to that Order. Article 102 of the Insolvency (Northern Ireland) Order 1989 (circumstances in which company may be wound up by the High Court) is also amended.

4. Regulation 3 contains a transitional provision.