

**2003 No. 3**

**COMPANIES**

**Companies (Northern Ireland) Order 1986 (Electronic Communications) Order (Northern Ireland) 2003**

*Made* - - - - - *7th January 2003*

*Coming into operation* *24th February 2003*

Whereas the Department of Enterprise, Trade and Investment considers that the authorisation of the use of electronic communications by this Order for any purpose is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases;

Now, therefore, the Department of Enterprise, Trade and Investment, in exercise of the powers conferred on it by sections 1 and 2 of the Electronic Communications Act (Northern Ireland) 2001(a) and of every other power enabling it in that behalf, hereby makes the following Order:

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Companies (Northern Ireland) Order 1986 (Electronic Communications) Order (Northern Ireland) 2003 and shall come into operation on 24th February 2003.

(2) In this Order, “the 1986 Order” means the Companies (Northern Ireland) Order 1986(b).

**Electronic attestation of subscriber’s signature**

**2.**—(1) Article 13 of the 1986 Order (requirements with respect to memorandum) is amended as follows.

(2) In paragraph (5), for the words “The memorandum” substitute the words “Subject to paragraph (5A), the memorandum”.

(3) Insert the following paragraph after paragraph (5) –

“(5A) Where the memorandum is delivered to the registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the registrar, the requirements in paragraph (5) for signature in the presence of at least one witness and for attestation of the signature do not apply.”.

**3.**—(1) Article 18 of the 1986 Order (regulation of companies by articles of association) is amended as follows.

(2) In paragraph (3), insert the words “subject to paragraph (4),” at the beginning of subparagraph (c).

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(a) 2001 c. 9 (N.I.)  
(b) S.I. 1986/1032 (N.I. 6)

(3) Insert the following paragraph after paragraph (3)–

“(4) Where the articles are delivered to the registrar otherwise than in legible form and are authenticated by each subscriber to the memorandum in such manner as is directed by the registrar, the requirements in paragraph (3)(c) for signature in the presence of at least one witness and for attestation of the signature do not apply.”.

#### **Electronic statement of compliance with incorporation requirements**

4.—(1) Article 23 of the 1986 Order (duty of registrar) is amended as follows.

(2) In paragraph (3), for the words “A statutory declaration” substitute the words “Subject to paragraph (4), a statutory declaration”.

(3) Insert the following paragraphs after paragraph (3) –

“(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 sub-paragraph (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.”.

#### **Electronic statement of compliance with Article 40 requirements**

5.—(1) Article 40 of the 1986 Order (exemption from requirement of “limited” as part of the name) is amended as follows.

(2) In paragraph (4) –

(a) for the words “A statutory declaration” substitute the word “Subject to paragraph (5A), a statutory declaration”, and

(b) omit the words from “; and the registrar” to the end.

(3) Insert the following paragraphs after paragraph (5) –

“(5A) In place of the statutory declaration referred to in paragraph (4), there may be delivered to the registrar using electronic communications a statement made by a person falling within the applicable sub-paragraph of paragraph (5) stating that the company complies with the requirements of paragraph (3); and the registrar may accept such a statement as sufficient evidence of the matters stated in it.

(5B) The registrar may refuse to register a company by a name which does not include the word “limited” unless a statutory declaration under paragraph (4) or statement under paragraph (5A) has been delivered to him.

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

#### **Electronic statement concerning private company becoming public**

6.—(1) Article 53 of the 1986 Order (re-registration of private company as public) is amended as follows.

(2) At the beginning of sub-paragraph (e) of paragraph (3), insert the words “subject to paragraph (3A),”.

(3) Insert the following paragraphs after paragraph (3) –

“(3A) In place of the statutory declaration referred to in sub-paragraph (e) of paragraph (3), there may be delivered to the registrar using electronic communications a statement made by a director or secretary of the company as to the matters set out in heads (i) and (ii) of that sub-paragraph.

(3B) Any person who makes a false statement under paragraph (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”.

7.—(1) Article 57 of the 1986 Order (certificate of re-registration under Article 53) is amended as follows.

(2) In paragraph (2), after the words “declaration under Article 53(3)(e)”, insert the words “or a statement under Article 53(3A)”.

#### **Electronic statement concerning limited company becoming unlimited**

8.—(1) Article 59 of the 1986 Order (re-registration of limited company as unlimited) is amended as follows.

(2) At the beginning of sub-paragraph (b) of paragraph (8), insert the words “subject to paragraph (8A)”.

(3) Insert the following paragraphs after paragraph (8) –

“(8A) In place of the lodging of a statutory declaration under sub-paragraph (b) of paragraph (8), there may be delivered to the registrar using electronic communications a statement made by the directors of the company as to the matters set out in heads (i) and (ii) of that sub-paragraph.

(8B) Any person who makes a false statement under paragraph (8A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”.

#### **Electronic statement concerning public company share capital**

9.—(1) Article 127 of the 1986 Order (public company share capital requirements) is amended as follows.

(2) At the end of paragraph (2) insert the words “This paragraph is subject to paragraph (3A)”.

(3) Insert the following paragraph after paragraph (3) –

“(3A) In place of the statutory declaration referred to in paragraph (2), there may be delivered to the registrar using electronic communications a statement made by a director or secretary of the company complying with the requirements of paragraph (3)(a) to (d).”

(4) In paragraph (5), after the words “statutory declaration” insert the words “or statement”.

(5) After paragraph (7) insert the following paragraph –

“(7A) Any person who makes a false statement under paragraph (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”.

#### **Electronic transmission of accounts and annual reports**

10.—(1) Article 246 of the 1986 Order (persons entitled to receive copies of accounts and reports)(a) is amended as follows.

(2) After paragraph (4), insert the following paragraphs –

“(4A) References in this Article to sending to any person copies of a company’s annual accounts, of the directors’ report and of the auditors’ report include references to using electronic communications for sending copies of those documents to such address as may for the time being be notified to the company by that person for that purpose.

(4B) For the purposes of this Article copies of those documents are also to be treated as sent to a person where –

- (a) the company and that person have agreed to his having access to the documents on a web site (instead of their being sent to him);
- (b) the documents are documents to which that agreement applies; and
- (c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of –

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(a) Article 246 was inserted by Article 12 of the Companies (Northern Ireland) Order 1990, S.I. 1990/593 (N.I. 5)

- (i) the publication of the documents on a web site;
- (ii) the address of that web site; and
- (iii) the place on that web site where the documents may be accessed, and how they may be accessed.

(4C) For the purposes of this Article documents treated in accordance with paragraph (4B) as sent to any person are to be treated as sent to him not less than 21 days before the date of a meeting if, and only if–

- (a) the documents are published on the web site throughout a period beginning at least 21 days before the date of the meeting and ending with the conclusion of the meeting; and
- (b) the notification given for the purposes of sub-paragraph (c) of that paragraph is given not less than 21 days before the date of the meeting.

(4D) Nothing in paragraph (4C) shall invalidate the proceedings of a meeting where –

- (a) any documents that are required to be published as mentioned in sub-paragraph (a) of that paragraph are published for a part, but not all, of the period mentioned in that sub-paragraph; and
- (b) the failure to publish those documents throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(4E) A company may, notwithstanding any provision to the contrary in its articles, take advantage of any of paragraphs (4A) to (4D).”.

**11.**—(1) Article 247 of the 1986 Order (right to demand copies of accounts and reports)(a) is amended as follows.

(2) After paragraph (2), insert the following paragraphs –

“(2A) Any obligation by virtue of paragraph (1) to furnish a person with a document may be complied with by using electronic communications for sending that document to such address as may for the time being be notified to the company by that person for that purpose.

(2B) A company may, notwithstanding any provision to the contrary in its articles, take advantage of paragraph (2A).”.

#### **Electronic transmission of summary financial statement**

**12.**—(1) Article 259 of the 1986 Order (provision of summary financial statement to shareholders)(b) is amended as follows.

(2) After paragraph (2), insert the following paragraphs –

“(2A) References in this Article to sending a summary financial statement to an entitled person include references to using electronic communications for sending the statement to such address as may for the time being be notified to the company by that person for that purpose.

(2B) For the purposes of this Article a summary financial statement is also to be treated as sent to an entitled person where –

- (a) the company and that person have agreed to his having access to summary financial statements on a web site (instead of their being sent to him);
- (b) the statement is a statement to which that agreement applies; and
- (c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of –
  - (i) the publication of the statement on a web site;
  - (ii) the address of that web site; and

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(a) Article 247 was inserted by Article 12 of the Companies (Northern Ireland) Order 1990

(b) Article 259 was substituted by Article 17 of the Companies (Northern Ireland) Order 1990 and amended by S.R. 1993 No. 220

(iii) the place on that web site where the statement may be accessed, and how it may be accessed.

(2C) For the purposes of this Article a statement treated in accordance with paragraph (2B) as sent to an entitled person is to be treated as sent to him if, and only if –

- (a) the statement is published on the web site throughout a period beginning at least 21 days before the date of the meeting at which the accounts and directors' report from which the statement is derived are to be laid and ending with the conclusion of that meeting; and
- (b) the notification given for the purposes of sub-paragraph (c) of that paragraph is given not less than 21 days before the date of the meeting.

(2D) Nothing in paragraph (2C) shall invalidate the proceedings of a meeting where –

- (a) any statement that is required to be published as mentioned in sub-paragraph (a) of that paragraph is published for a part, but not all, of the period mentioned in that sub-paragraph; and
- (b) the failure to publish that statement throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(2E) A company may, notwithstanding any provision to the contrary in its articles, take advantage of any of paragraphs (2A) to (2D).”.

### **Electronic requirement that accounts and reports be laid before the company in general meeting**

**13.**—(1) Article 261 of the 1986 Order (right of shareholder to require laying of accounts)(a) is amended as follows.

(2) After paragraph (2), insert the following paragraph—

“(2A) The power of a member or auditor under paragraph (2) to require the holding of a general meeting is exercisable not only by the deposit of a notice in writing but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.”.

(3) In paragraph (3) –

- (a) for the words “the deposit of such a notice proceed” substitute –  
“ – (a) the deposit of a notice containing a requirement under paragraph (2), or  
(b) the receipt of such a requirement contained in an electronic communication, proceed”, and
- (b) for the words “deposited the notice” substitute the words “required the holding of the meeting”.

(4) In paragraph (5), for the words “deposited the notice” substitute the words “required the holding of the meeting”.

### **Definition of “address”**

**14.**—(1) The following definition is inserted at the appropriate place in Article 270(1) of the 1986 Order (minor definitions)(b) –

“ “address”, except in Article 236, in relation to electronic communications, includes any number or address used for the purposes of such communications;”.

(2) The following entry is inserted at the appropriate place in the index of defined expressions set out in Article 270A(c) –

“ “address” Article 270(1)”.

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(a) Article 261 was inserted by Article 18 of the Companies (Northern Ireland) Order 1990  
(b) Article 270 was inserted by Article 24 of the Companies (Northern Ireland) Order 1990  
(c) Article 270A was inserted by Article 24 of the Companies (Northern Ireland) Order 1990

### **Electronic requirement that annual general meeting be held**

**15.**—(1) Article 374A of the 1986 Order (election by private company to dispense with annual general meetings)(a) is amended as follows.

(2) After paragraph (3), insert the following paragraph –

“(3A) The power of a member under paragraph (3) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.”.

(3) In paragraph (4), after the words “notice is given” insert “or electronic communication is transmitted”.

(4) In paragraph (5), after the words “notice given” insert “or electronic communication transmitted”.

(5) Insert the following paragraph after paragraph (5) –

“(6) In this Article, “address” includes any number or address used for the purposes of electronic communications.”.

### **Electronic transmission of notices of meetings**

**16.**—(1) Article 377 of the 1986 Order (length of notice for calling meetings)(b) is amended as follows.

(2) Insert the following paragraphs after paragraph (4) –

“(5) For the purposes of this Article the cases in which notice in writing of a meeting is to be taken as given to a person include any case in which notice of the meeting is sent using electronic communications to such address as may for the time being be notified by that person to the company for that purpose.

(6) For the purposes of this Article a notice in writing of a meeting is also to be treated as given to a person where –

- (a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site;
- (b) the meeting is a meeting to which that agreement applies;
- (c) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of –
  - (i) the publication of the notice on a web site;
  - (ii) the address of that web site; and
  - (iii) the place on that web site where the notice may be accessed, and how it may be accessed;

and

- (d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting;

and for the purposes of this Article a notice treated in accordance with this paragraph as given to any person is to be treated as so given at the time of the notification mentioned in sub-paragraph (c).

(7) A notification given for the purposes of paragraph (6)(c) must –

- (a) state that it concerns a notice of a company meeting served in accordance with this Order,
- (b) specify the place, date and time of the meeting, and
- (c) state whether the meeting is to be an annual or extraordinary general meeting.

(8) Nothing in paragraph (6) shall invalidate the proceedings of a meeting where –

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(a) Article 374A was inserted by Article 50(2) of the Companies (No. 2) (Northern Ireland) Order 1990, S.I. 1990/1504 (N.I. 10)

(b) Article 377 was amended by Article 50(3) of the Companies (No. 2) (Northern Ireland) Order 1990

- (a) any notice that is required to be published as mentioned in sub-paragraph (d) of that paragraph is published for a part, but not all, of the period mentioned in that sub-paragraph; and
- (b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(9) A company may, notwithstanding any provision to the contrary in a company's articles, take advantage of any of paragraphs (5) to (8).

(10) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A (as for the time being in operation) as to such service shall apply.

(11) In this Article "address" includes any number or address used for the purposes of electronic communications."

### **Electronic transmission of proxy appointments**

**17.**—(1) Article 380 of the 1986 Order (proxies) is amended as follows.

(2) After paragraph (2) insert the following paragraphs –

“(2A) The appointment of a proxy may, notwithstanding any provision to the contrary in a company's articles, be contained in an electronic communication sent to such address as may be notified by or on behalf of the company for that purpose.

(2B) In so far as the articles of the company do not make other provision in that behalf, the appointment of a proxy may be contained in an electronic communication in accordance with the provisions of Table A (as for the time being in operation).”

(3) In paragraph (5), for the words “the instrument appointing a proxy, or any other” substitute the words “the appointment of a proxy or any”.

(4) In paragraph (6), delete the words “in writing” in both places where they occur.

(5) Insert the following paragraph after paragraph (6) –

“(6A) In this Article “address” includes any number or address used for the purposes of electronic communications.”

**18.**—(1) Article 381 of the 1986 Order (right to demand a poll) is amended as follows.

(2) In paragraph (2), for the words “The instrument appointing” substitute the words “The appointment of ”.

### **Electronic transmission of notice of meeting to pass elective resolution**

**19.**—(1) Article 387A of the 1986 Order (elective resolution of private company)(a) is amended as follows.

(2) Insert the following paragraphs after paragraph (2A) –

“(2B) For the purposes of this Article, notice in writing of the meeting is to be taken as given to a person where notice of the meeting is sent using electronic communications to such address as may for the time being be notified by that person to the company for that purpose.

(2C) For the purposes of this Article a notice in writing of the meeting is also to be treated as given to a person where –

- (a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site;
- (b) the meeting is a meeting to which that agreement applies;

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(a) Article 387A was inserted by Article 51 of the Companies (No. 2) (Northern Ireland) Order 1990 and amended by Article 5(2) of the Deregulation (Northern Ireland) Order 1997, S.I. 1997/2984 (N.I. 22)

- (c) that person is notified, in manner for the time being agreed between him and the company for the purpose, of –
  - (i) the publication of the notice on a web site;
  - (ii) the address of that web site; and
  - (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and
- (d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting;

and for the purposes of this Article a notice treated in accordance with this paragraph as given to any person is to be treated as so given at the time of the notification mentioned in sub-paragraph (c).

- (2D) A notification given for the purposes of paragraph (2C)(c) must –
  - (a) state that it concerns a notice of a company meeting at which an elective resolution is to be proposed, and
  - (b) specify the place, date and time of the meeting.

- (2E) Nothing in paragraph (2C) shall invalidate the proceedings of a meeting where –
  - (a) any notice that is required to be published as mentioned in sub-paragraph (d) of that paragraph is published for a part, but not all, of the period mentioned in that sub-paragraph; and
  - (b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(2F) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A (as for the time being in operation) as to such service shall apply.”.

(3) In paragraph (5), for the words “paragraph (1)” substitute “paragraphs (1) and (2B) to (2E)”.

(4) Insert the following paragraph after paragraph (5) –

“(6) In this article, “address” includes any number or address used for the purposes of electronic communications.”.

#### **Electronic statement to obtain memorandum of satisfaction**

**20.**—(1) Article 411 of the 1986 Order (entries of satisfaction and release)(a), as in operation at the date of coming into operation of this Order, is amended as follows.

(2) At the beginning of paragraph (1), for the words “The registrar” substitute the words “Subject to paragraph (1A), the registrar”.

(3) Insert the following paragraph after paragraph (1) –

“(1A) The registrar may make any such entry as is mentioned in paragraph (1) where, instead of receiving such a statutory declaration as is mentioned in that paragraph, he receives a statement by a director, secretary, administrator or administrative receiver of the company which is contained in an electronic communication and that statement –

- (a) verifies the matters set out in sub-paragraph (a) or (b) of that paragraph,
- (b) contains a description of the charge,
- (c) states the date of creation of the charge and the date of its registration under this Part,
- (d) states the name and address of the chargee or, in the case of a debenture, trustee, and

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(a) Articles 402 to 417J of the 1986 Order (new provisions relative to the registration of charges with respect to companies registered in Northern Ireland) were substituted for Articles 402 to 416 of that Order by Articles 28 to 40 of the Companies (No. 2) (Northern Ireland) Order 1990. Those substitutions have not yet been brought into operation.



(e) where sub-paragraph (b) of paragraph (1) applies, contains short particulars of the property or undertaking which has been released from the charge, or which has ceased to form part of the company's property or undertaking (as the case may be)."

(4) Insert the following paragraph after paragraph (2) –

"(3) Any person who makes a false statement under paragraph (1A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both."

#### **Electronic statement concerning joint stock company becoming public**

**21.**—(1) Article 634 of the 1986 Order (registration of joint stock company as public company)(a) is amended as follows.

(2) At the beginning of sub-paragraph (e) of paragraph (4), insert the words "subject to paragraph (4A),"

(3) Insert the following paragraph after paragraph (4) –

"(4A) In place of the statutory declaration referred to in sub-paragraph (e) of paragraph (4), there may be delivered to the registrar using electronic communications a statement made by a director or secretary of the company as to the matters set out in heads (i) and (ii) of that sub-paragraph."

(4) In paragraph (5), after the words "paragraph (4)(e)", insert the words "or statement under paragraph (4A)".

(5) Insert the following paragraph after paragraph (6) –

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

#### **Electronic statement concerning other registrations under Chapter II of Part XXII**

**22.**—(1) Article 635 of the 1986 Order (other requirements for registration)(b) is amended as follows.

(2) In paragraph (2), for the words "The lists" substitute the words "Subject to paragraph (2A), the lists".

(3) Insert the following paragraph after paragraph (2) –

"(2A) In place of the statutory declaration referred to in paragraph (2), there may be delivered to the registrar using electronic communications a statement made by any two or more directors or other principal officers of the company verifying the matters set out in that paragraph."

(4) Insert the following paragraph after paragraph (3) –

"(4) Any person who makes a false statement under paragraph (2A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both."

#### **Electronic statement concerning establishment of place of business in Northern Ireland**

**23.**—(1) Article 641 of the 1986 Order (documents to be delivered to registrar)(c) is amended as follows.

(2) At the beginning of head (iv) of sub-paragraph (b) of paragraph (1), insert the words "subject to paragraph (3A),"

(3) Insert the following paragraph after paragraph (3) –

"(3A) In place of the statutory declaration referred to in head (iv) of sub-paragraph (b) of paragraph (1), there may be delivered to the registrar using electronic communications a statement made by any person by whom the declaration could have been made stating the date on which the company's place of business in Northern Ireland was established."

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(a) Article 634 was amended by S.R. 1993 No. 67

(b) Article 635 was amended by paragraph 5 of Schedule 5 to the Companies (No. 2) (Northern Ireland) Order 1990

(c) Article 641 was amended by paragraph 6 of Schedule 5 to the Companies (No. 2) (Northern Ireland) Order 1990

(4) Insert the following paragraph after paragraph (4) –

“(5) Any person who makes a false statement under paragraph (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”.

#### **Insertion of new Article 656B**

**24.** The following Article shall be inserted after Article 656A(a) –

##### **“Delivery to the registrar using electronic communications**

**656B.**—(1) Electronic communications may be used for the delivery of any document to the registrar under any provision of the Companies Orders (including delivery of a document in the prescribed form), provided that such delivery is in such form and manner as is directed by the registrar.

(2) Where the document is required under any provision of the Companies Orders to be signed or sealed, it shall instead be authenticated in such manner as is directed by the registrar.

(3) The document must contain in a prominent position –

(a) the name and registered number of the company to which it relates, or

(b) if the document is delivered under Part XXIII, the registered number of the branch or place of business of the company to which it relates.

(4) If a document is delivered to the registrar which does not comply with the requirements imposed by or under this Article, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(5) Where the registrar serves such a notice, then unless a replacement document–

(a) is delivered to him within 14 days after the service of the notice, and

(b) complies with the requirements of this Article (or Article 655) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

But for the purposes of any statutory provision imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar’s notice.

(6) In this Article references to the delivery of a document include references to the forwarding, lodging, registering, sending or submission of a document and to the giving of a notice.”.

#### **Expressions used in the 1986 Order**

**25.**—(1) Article 10 of the 1986 Order (expressions used in connection with accounts)(b) is amended as follows.

(2) After paragraph (2), insert the following paragraph –

“(3) References in this Order to sending or sending out copies of any of the documents referred to in Article 246(1) include sending or sending out such copies in accordance with Article 246(4A) or (4B).”.

**26.**—(1) Article 2(3) of the 1986 Order (general interpretation) is amended as follows.

(2) Insert the following definitions at the appropriate places –

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(a) Article 656A was inserted by Article 60(1) of the Companies (No. 2) (Northern Ireland) Order 1990  
(b) Article 10 was substituted by Part I of Schedule 10 to, the Companies (Northern Ireland) Order 1990

“communication” means the same as in the Electronic Communications Act (Northern Ireland) 2001;

“electronic communication” means the same as in the Electronic Communications Act (Northern Ireland) 2001;”.

27.—(1) Article 2A of the 1986 Order (index of defined expressions)(a) is amended as follows.

(2) Insert the following entries at the appropriate places –

“communication” Article 2(3)

“electronic communications” Article 2(3)”.

### Consequential amendments

28.—(1) In Article 39 of the 1986 Order (regulations about names) –

(a) in paragraph (2)(a), for the words “required by Article 23(3)”, substitute the words “under Article 23(3) or statement under Article 23(4) (as the case may be)”,

(b) in paragraph (2)(b), for the words “required by Article 635(2)” substitute the words “under Article 635(2) or statement under Article 635(2A) (as the case may be)”, and

(c) in paragraph (3)(a), after the words “statutory declaration” insert the words “or statement”.

(2) In Article 398 of the 1986 Order (auditors’ right to attend company meetings, etc.)(b), insert the following paragraph after paragraph (1) –

“(1A) Paragraphs (5) to (11) of Article 377 (electronic communication of notices of meetings) apply for the purpose of determining whether notice of a meeting is received by the company’s auditors as they apply in determining whether such a notice is give to any person.”.

(3) Article 656 of the 1986 Order (delivery to the registrar of documents otherwise than in legible form)(c) is hereby repealed, and –

(a) in Article 655(4)(b) of the 1986 Order (delivery to the registrar of documents in legible form)(c) for “656” substitute “656B”; and

(b) in Article 2A(3) of the 1986 Order (relationship of Companies Order to the Insolvency Order)(d) for “656(1)” substitute “656B”.

(4) In Article 660(1)(g) of the 1986 Order (public notice by registrar of receipt of statutory declaration under Article 127), after the words “statutory declaration” insert the words “or statement”.

(5) Schedule 23 to the 1986 Order (punishment of offences) is amended by the insertion of the following entries at the appropriate places –

<i>Article of Order creating offence</i>	<i>General nature of offence</i>	<i>Mode of prosecution</i>	<i>Punishment</i>	<i>Daily default fine (where applicable)</i>
“23(5)	Person making false statement under Article 23(4) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	

- (a) Article 2A was inserted by paragraph 1 of Schedule 5 to the Companies (No. 2) (Northern Ireland) Order 1990
- (b) Article 398 was substituted by Articles 53 and 55 of the Companies (No. 2) (Northern Ireland) Order 1990, and amended by Schedule 4 to the Deregulation (Northern Ireland) Order 1997, S.I. 1997/2984 (N.I. 22)
- (c) Articles 655 and 656 were substituted by Article 59 of the Companies (No. 2) (Northern Ireland) Order 1990 and were amended by S.R. 1993 No. 198
- (d) Article 2A was inserted by paragraph 2 of Part I of Schedule 9 to the Insolvency (Northern Ireland) Order 1989, S.I. 1989/2405 (N.I. 19)

<i>Article of Order creating offence</i>	<i>General nature of offence</i>	<i>Mode of prosecution</i>	<i>Punishment</i>	<i>Daily default fine (where applicable)</i>
40(5C)	Person making false statement under Article 40(5A) which he knows to be false or does not believe to be true	1. On indictment. 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	
53(3B)	Person making false statement under Article 53(3A) which he knows to be false or does not believe to be true	1. On indictment. 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	
59(8B)	Person making false statement under Article 59(8A) which he knows to be false or does not believe to be true	1. On indictment. 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	
127(7A)	Person making false statement under Article 127(3A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	
411(3)	Person making false statement under Article 411(1A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	
634(7)	Person making false statement under Article 634(4A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	
635(4)	Person making false statement under Article 635(2A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	

<i>Article of Order creating offence</i>	<i>General nature of offence</i>	<i>Mode of prosecution</i>	<i>Punishment</i>	<i>Daily default fine (where applicable)</i>
641(5)	Person making false statement under section 641(3A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both"; and	

**Amendment of subordinate legislation made under the 1986 Order**

**29.**—(1) Subject to paragraph (3), Table A as prescribed by the Companies (Tables A to F) Regulations (Northern Ireland) 1986(a) is amended in accordance with Schedule 1.

(2) The Companies (Summary Financial Statement) Regulations (Northern Ireland) 1996(b) are amended in accordance with Schedule 2.

(3) Paragraph (1) does not affect a company registered before the coming into operation of this Order.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 7th January 2003.

(L.S.)

*M. Bohill*

A senior officer of the Department of Enterprise, Trade and Investment

(a) S.R. 1986 No. 264

(b) S.R. 1996 No. 179

## SCHEDULE 1

Article 29(1)

### AMENDMENT OF TABLE A

1. Regulation 1 of Table A (interpretation) is amended by inserting the following definitions at the appropriate places—

“communications” means the same as in the Electronic Communications Act (Northern Ireland) 2001;

“electronic communication” means the same as in the Electronic Communications Act (Northern Ireland) 2001;”.

2.—(1) Regulation 60 of Table A (appointment of proxy) is amended as follows.

(2) For the words “An instrument appointing” substitute the words “The appointment of”, and omit the words “in writing,”.

3. In regulation 61 of Table A (instructions to proxy), for the words “instrument appointing” substitute the words “appointment of”.

4.—(1) Regulation 62 of Table A (lodging of proxy appointment) is amended as follows.

(2) For the words “The instrument appointing” substitute the words “The appointment of”.

(3) In sub-paragraph (a), before the words “be deposited” insert “in the case of an instrument in writing”.

(4) After sub-paragraph (a) insert the following –

“(aa) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications –

(i) in the notice convening the meeting, or

(ii) in any instrument of proxy sent out by the company in relation to the meeting, or

(iii) in any invitation contained in an electronic communication to appoint a proxy issued by the company in relation to the meeting,

be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;”.

(5) In sub-paragraph (b), after the words “be deposited” insert the words “or received”.

(6) For the words “and an instrument of proxy which is not deposited or delivered” substitute “and an appointment of proxy which is not deposited, delivered or received”.

(7) At the end insert the words “In this regulation and the next, “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.”

5. In regulation 63 of Table A (determination of proxy appointment), after the word “deposited” insert the words “or, where the appointment of the proxy was contained in an electronic communication, at the address at which such appointment was duly received.”

6. For regulation 111 of Table A (form of notices) substitute the following –

“111. Any notice to be given to or by any person pursuant to the articles (other than a notice calling a meeting of the directors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice.

In this regulation, “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.”

7. In regulation 112 of Table A (giving of notices) –

(a) after the words “leaving it at that address”, insert the words “or by giving it using electronic communications to an address for the time being notified to the company by the member”,

(b) after the words “at which notices may be given to him” insert the words “, or an address to which notices may be sent using electronic communications;”, and

(c) at the end insert the words “In this regulation and the next, “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.”

8.—(1) Regulation 115 of Table A (when notices deemed to be given) is amended as follows.

(2) After the words “notice was given.” insert “Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given.”

(3) After the words “was posted” insert the words “or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent”.

## SCHEDULE 2

Article 29(2)

### AMENDMENT OF THE COMPANIES (SUMMARY FINANCIAL STATEMENT) REGULATIONS (NORTHERN IRELAND) 1996

1. The Companies (Summary Financial Statement) Regulations (Northern Ireland) 1996 are amended as follows.

2.—(1) Regulation 2 (interpretation) is hereby renumbered regulation 2(1), and the following definitions are inserted at the appropriate places –

“address” means the same as in Article 270(1) of the Companies (Northern Ireland) Order 1986;

“communication” means the same as in the Electronic Communications Act (Northern Ireland) 2001;

“electronic communication” means the same as in the Electronic Communications Act (Northern Ireland) 2001;”.

(2) Insert the following sub-paragraph after regulation 2(1) –

“(2) References in these Regulations to sending an entitled person copies of the full accounts and reports include sending such copies in accordance with Article 246 (4A) and (4B), and references to sending an entitled person a summary financial statement include sending such a statement in accordance with Article 259 (2A) and (2B)”.

3. In regulation 4 (ascertainment of entitled person’s wishes) –

(a) in paragraph (2)(a) omit the words “in writing”,

(b) in paragraph (3), after the words “paragraph (2)(a)” insert the words “and subject to paragraph (3A)”, and

(c) insert the following sub-paragraph after sub-paragraph (3) –

“(3A) If a relevant notification is not in writing, it must be contained in an electronic communication transmitted to the company at an address specified by or on behalf of the company for that purpose.”.

4.—(1) Regulation 5 (consultation by notice) is amended as follows.

(2) In paragraph (1) –

(a) for the words “authorised by the company’s” substitute the words “in which the company may send notices of meetings pursuant to the 1986 Order or its”,

(b) in sub-paragraph (a) for the words “in writing” substitute “either in writing or by sending the notification in an electronic communication to an address specified for that purpose”, and

(c) in sub-paragraph (c) omit the word “printed”.

(3) In paragraph (2) –

(a) for the words from “printed card” to “paid by the company”, substitute “card or form (in respect of which, in the case of a card or form sent by post, any postage necessary for its return to the company has been, or will be, paid by the company).”, and

(b) after the words “returning the card or form” insert “either by post or in an electronic communication sent to a specified address”.

(4) In paragraph (3), omit the word “printed”.

5.—(1) Regulation 6 (relevant consultation) is amended as follows.

(2) In paragraph (2) –

- (a) for the words “authorised by the company’s” substitute the words “in which the company may send notices of meetings pursuant to the 1986 Order or its”,
- (b) in sub-paragraph (a), for the words “in writing” substitute “either in writing or by sending the notification in an electronic communication to an address specified for that purpose”, and
- (c) in sub-paragraph (d) –
  - (i) omit the word “printed”,
  - (ii) after the words “in respect of which” insert “, in the case of a card or form sent by post,”, and
  - (iii) after the words “returning the card or form” insert “either by post or in an electronic communication sent to a specified address”.

6. In sub-paragraph (5)(b) of regulation 7 (provisions applying to all companies and groups), omit the words “in writing”.



## EXPLANATORY NOTE

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

This Order which is made under sections 1 and 2 of the Electronic Communications Act (Northern Ireland) 2001 modifies various provisions of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (“the 1986 Order”) for the purpose of authorising or facilitating the use of electronic communications between companies and their members, debenture holders and auditors, and between companies and the registrar of companies.

2. *Articles 2 and 3* modify Articles 13 and 18 of the 1986 Order respectively (requirements with respect to memorandum and articles of association), to remove the requirement for attestation of the signatures of subscribers to the memorandum where the memorandum and articles are delivered to the registrar of companies electronically.

3. *Articles 4 to 9 and 20 to 23* modify the following provisions of the 1986 Order to provide in each case for the electronic delivery to the registrar of companies of a statement as an alternative to the delivery of a sworn statutory declaration in writing –

Article 23 (duty of registrar on incorporation of a company)

Article 40 (exemption from requirement of “limited” as part of company name)

Articles 53 and 57 (re-registration of private company as public)

Article 59 (re-registration of limited company as unlimited)

Article 127 (public company share capital requirements)

Article 411 (entries of satisfaction and release of charges)

Article 634 (registration of joint stock company as public company)

Article 635 (other requirements for registration under Chapter II of Part XXII)

Article 641 (documents to be delivered to registrar by Part XXIII company establishing place of business in Northern Ireland).

Penalties for making false statements under these provisions are inserted into Schedule 23 to the 1986 Order by Article 28(5), and consequential amendments to Articles 39 and 660 of the 1986 Order are made by Article 28(1) and (4).

4. *Article 10* modifies Article 246 of the 1986 Order (persons entitled to receive copies of accounts and reports) to enable copies of the annual accounts and reports to be sent electronically to those entitled to receive them. Either the accounts and reports can be sent directly to an electronic address (“address is defined for the purposes of Part VIII in Article 270 – see *Article 14*) supplied for the purpose by the recipient, or they can be published on a web site and the recipient notified of their availability in a manner agreed with him. In the latter case, the accounts and reports must be published on the web site for at least 21 days before the general meeting before which they are to be laid. *Articles 12 and 29(2)* and *Schedule 2* make equivalent modifications to Article 259 of the 1986 Order and regulations thereunder concerning the sending of summary financial statements in place of the full accounts.

5. *Article 11* modifies Article 247 of the 1986 Order (right to demand copies of accounts and reports) to enable a company to meet a demand under that Article for a copy of the annual accounts and reports electronically.

6. *Article 13* modifies Article 261 of the 1986 Order (right of shareholder to require laying of accounts) to enable members or auditors exercising their powers under that Article to require the holding of a general meeting for the laying of accounts, to do so by communicating with an electronic address supplied by the company for that purpose. *Article 15* makes equivalent modifications to Article 374A of the 1986 Order (right of member to require the holding of an annual general meeting).

7. *Article 16* modifies Article 377 of the 1986 Order (length of notice for calling meetings) to enable notices of company meetings to be sent electronically to those entitled to receive them. Either the notices can be sent directly to an electronic address supplied for the purpose by the recipient, or they can be published on a web site and the recipient notified of their availability in manner agreed with him. In the latter case, the notice must be published on the web site for at least the period for which notice of the meeting must be given under Article 377.

Furthermore, the notification given to the recipient that the notice is available on a web site must contain certain details of the meeting (see Article 377 (7)). *Article 28(2)* applies these provisions for the purpose of Article 398 (auditors' right to attend company meetings, etc), and Article 19 makes equivalent modifications to Article 387A concerning the giving of notice of a meeting at which an elective resolution is to be proposed.

8. *Articles 17 and 18* modify Articles 380 and 381 of the 1986 Order (proxies) to enable a member to appoint proxies electronically by communicating with an electronic address supplied by the company for the purpose.

9. *Article 24* inserts a new Article 656B into the 1986 Order replacing Article 656 (which is repealed by *Article 28(3)*) enabling the registrar of companies to direct that any document required to be delivered to him under the Companies Orders (as defined in Article 2 of the 1986 Order) and the Insolvency Order (Northern Ireland) 1989 (see Article 2A of the 1986 Order as amended by *Article 28(3)*) may be delivered electronically in form and manner directed by him.

10. Articles 25 to 27 insert relevant definitions into the 1986 Order.

11. *Article 29(1) and Schedule 1* amend the articles of association prescribed in Table A to enable the electronic appointment of proxies and sending of notices. The guidance referred to in the amendment to regulation 115 of Table A (see paragraph 8 of Schedule 1) is "Electronic Communications with Shareholders: A Guide to Recommended Best Practice", and copies of the guidance are obtainable from The Policy Unit, The Institute of Chartered Secretaries and Administrators, 16 Park Crescent, London, W1B 1AH.

12. A Regulatory Impact Assessment of this Order is available from the Department of Enterprise, Trade and Investment, Corporate Regulation, 64 Chichester Street, Belfast, BT1 4JX. A copy has also been placed in the Assembly Library.

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