Draft Order laid before Parliament under section 9(4) of the Electronic Communications Act 2000 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2000 No.

COMPANIES

The Companies Act 1985 (Electronic Communications) Order 2000

Made - - - -	*2000*
Coming into force - -	*2000*

Whereas the Secretary of State 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 Secretary of State, in exercise of the powers conferred on him by sections 8 and 9 of the Electronic Communications Act 2000(**1**) and of all other powers enabling him in that behalf, hereby makes the following Order, a draft of which has been laid before Parliament in accordance with section 9(4) of that Act, and approved by a resolution of each House of Parliament:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Companies Act 1985 (Electronic Communications) Order 2000 and shall come into force on the day after the day on which it is made.

(2) In this Order, "the 1985 Act" means the Companies Act 1985(**2**).

Electronic attestation of subscriber's signature

2.—(1) Section 2 of the 1985 Act (requirements with respect to memorandum)(**3**) is amended as follows.

(2) In subsection (6), for the words "The memorandum" substitute the words "Subject to subsection (6A), the memorandum".

(3) Insert the following subsection after subsection (6)—

(**1**) 2000 c. 7.
(**2**) 1985 c. 6.
(**3**) Section 2 was amended by section 14(2) of, and Schedule 5 to, the Requirements of Writing (Scotland) Act 1995 (c. 7).

"(6A) 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 subsection (6) for signature in the presence of at least one witness and for attestation of the signature do not apply."

3.—(1) Section 7 of the 1985 Act (articles prescribing regulations for companies)(**4**) is amended as follows.

(2) In subsection (3), insert the words "subject to subsection (3A)," at the beginning of paragraph (c).

(3) Insert the following subsection after subsection (3)—

"(3A) 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 subsection (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) Section 12 of the 1985 Act (duty of registrar) is amended as follows.

(2) In subsection (3), for the words "A statutory declaration" substitute the words "Subject to subsection (3A), a statutory declaration".

(3) Insert the following subsections after subsection (3)—

"(3A) In place of the statutory declaration referred to in subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a person mentioned in paragraph (a) or (b) of subsection (3) that the requirements mentioned in subsection (1) have been complied with; and the registrar may accept such a statement as sufficient evidence of compliance.

(3B) Any person who makes a false statement under subsection (3A) 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 section 30 requirements

5.—(1) Section 30 of the 1985 Act (exemption from requirement of "limited" as part of the name) is amended as follows.

(2) In subsection (4)—

(a) for the words "A statutory declaration" substitute the words "Subject to subsection (5A), a statutory declaration", and

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

(3) Insert the following subsections after subsection (5)—

"(5A) In place of the statutory declaration referred to in subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a person falling within the applicable paragraph of subsection (5) stating that the company complies with the requirements of subsection (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 subsection (4) or statement under subsection (5A) has been delivered to him.

(**4**) Section 7 was amended by section 14(2) of, and Schedule 5 to, the Requirements of Writing (Scotland) Act 1995.

(5C) Any person who makes a false statement under subsection (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) Section 43 of the 1985 Act (re-registration of private company as public) is amended as follows.

(2) At the beginning of paragraph (e) of subsection (3), insert the words "subject to subsection (3A),".

(3) Insert the following subsections after subsection (3)—

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

(3B) Any person who makes a false statement under subsection (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) Section 47 of the 1985 Act (certificate of re-registration under s.43) is amended as follows.

(2) In subsection (2), after the words "declaration under section 43(3)(e)", insert the words "or a statement under section 43(3A)".

Electronic statement concerning limited company becoming unlimited

8.—(1) Section 49 of the 1985 Act (re-registration of limited company as unlimited) is amended as follows.

(2) At the beginning of paragraph (b) of subsection (8), insert the words "subject to subsection (8A),".

(3) Insert the following subsections after subsection (8)—

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

(8B) Any person who makes a false statement under subsection (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) Section 117 of the 1985 Act (public company share capital requirements) is amended as follows.

(2) At the end of subsection (2) insert the words "This subsection is subject to subsection (3A).".

(3) Insert the following subsection after subsection (3)—

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

(4) In subsection (5), after the words "statutory declaration" insert the words "or statement".

(5) After subsection (7) insert the following subsection—

"(7A) Any person who makes a false statement under subsection (3A) 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 financial assistance

10.—(1) Section 155 of the 1985 Act (relaxation of s.151 for private companies) is amended as follows.

(2) In subsection (6), for the words "The directors of the company" substitute the words "Subject to subsection (6A), the directors of the company".

(3) Insert the following subsection after subsection (6)—

"(6A) In place of the statutory declaration referred to in subsection (6), there may be delivered to the registrar of companies under section 156(5) a statement made by the persons mentioned in subsection (6) above complying with the section next following."

11.—(1) Section 156 (statutory declaration under s.155) is amended as follows.

(2) After subsection (1) insert the following subsection—

"(1A) A statement made by a company's directors under section 155(6A) shall state—

(a) the names and addresses of all the directors of the company,

(b) whether the business of the company is that of a banking company or insurance company or some other business,

(c) that the company or (as the case may be) a company (naming such company) of which it is the holding company is proposing to give financial assistance in connection with the acquisition of shares in the company or (as the case may be) its holding company (naming that holding company),

(d) whether the assistance is for the purpose of that acquisition or for reducing or discharging a liability incurred for the purpose of that acquisition,

(e) the name and address of the person to whom the assistance is to be given (and in the case of a company its registered office),

(f) the name of the person who has acquired or will acquire the shares and the number and class of the shares acquired or to be acquired,

(g) the principal terms on which the assistance will be given,

(h) the form the financial assistance will take (stating the amount of cash or value of any asset to be transferred to the person assisted), and

(i) the date on which the assistance is to be given."

(3) In subsection (2) after the words "The declaration" insert the words "under section 155(6) or (as the case may be) statement under section 155(6A)".

(4) In subsections (4), (5) and (7), after the word "declaration" in each place where it occurs insert the words "or statement".

Electronic transmission of accounts and annual reports

12.—(1) Section 238 of the 1985 Act (persons entitled to receive copies of accounts and reports) (**5**) is amended as follows.

(2) After subsection (4), insert the following subsections—

(**5**) Section 238 was substituted by sections 1 and 10 of the Companies Act 1989 (c. 40).

"(4A) References in this section 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 section 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—

(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 section documents treated in accordance with subsection (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 paragraph (c) of that subsection is given not less than 21 days before the date of the meeting.

(4D) Nothing in subsection (4C) shall invalidate the proceedings of a meeting where—

(a) any documents that are required to be published as mentioned in paragraph (a) of that subsection are published for a part, but not all, of the period mentioned in that 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 subsections (4A) to (4D)."

13.—(1) Section 239 of the 1985 Act (right to demand copies of accounts and reports)(**6**) is amended as follows.

(2) After subsection (2), insert the following subsections—

"(2A) Any obligation by virtue of subsection (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 subsection (2A)."

(**6**) Section 239 was substituted by sections 1 and 10 of the Companies Act 1989.