STATUTORY RULES OF NORTHERN IRELAND

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(**1**) 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(**2**).

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.".

(**1**) 2001 c. 9 (N.I.)
(**2**) S.I. 1986/1032 (N.I. 6)

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 sub-paragraph (c).

(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)(**3**) is amended as follows.

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

(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–

(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)(**4**) is amended as follows.

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

"(2B) 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).".

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

Electronic transmission of summary financial statement

12.—(1) Article 259 of the 1986 Order (provision of summary financial statement to shareholders)(**5**) 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

(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)(**6**) is amended as follows.

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

(**5**) Article 259 was substituted by Article 17 of the Companies (Northern Ireland) Order 1990 and amended by S.R. 1993 No. 220
(**6**) Article 261 was inserted by Article 18 of the Companies (Northern Ireland) Order 1990