1972. No. 277 **[C]**

COMPANIES

ORDER, DATED 20TH OCTOBER 1972, MADE BY THE SECRETARY OF STATE UNDER SECTION 4(3)(*a*) OF THE EUROPEAN COMMUNITIES ACT 1972.

WHEREAS by section 4(3)(*a*) of the European Communities Act 1972(**a**) (hereinafter referred to as "the Act") it is provided that where any of the subsequent sections of the Act or any paragraph of schedule 4 to the Act affects or is construed as one with an Act or Part of an Act similar in purpose to provisions having effect only in Northern Ireland, then the Governor of Northern Ireland may by Order in Council make provision corresponding to any made by the section or paragraph:

AND WHEREAS section 9 of the Act is construed as one with the Companies Act 1948(**b**) which is similar in purpose to the Companies Act (Northern Ireland) 1960(**c**) (hereinafter referred as as "the Act of 1960"):

AND WHEREAS by subsection (1)(*a*) of section 1 of the Northern Ireland (Temporary Provisions) Act 1972(**d**) it is provided that so long as that section has effect all functions which apart from that Act belong to the Governor in Council shall be discharged by the Secretary of State:

NOW THEREFORE the Secretary of State in exercise of the powers conferred on him by section 4(3)(*a*) of the Act and by section 1(1)(*a*) of the Northern Ireland (Temporary Provisions) Act 1972 and of all other powers enabling him in that behalf hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Companies (European Communities) Order (Northern Ireland) 1972 and shall not come into operation until the entry date except to authorise the making with effect from that date of regulations made by virtue of Article 8.

Interpretation and construction

2.—(1) In this Order—

"the Act" means the European Communities Act 1972;

"the Act of 1960" means the Companies Act (Northern Ireland) 1960;

"The Communities" means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community;

"entry date" means the date on which the United Kingdom becomes a member of the Communities.

(2) The Interpretation Act (Northern Ireland) 1954(**e**) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of the Parliament of Northern Ireland.

(3) This Order shall be construed as one with the Act of 1960.

(**a**) 1972. c. 68.
(**b**) 11 & 12 Geo. 6. c. 38.
(**c**) 1960. c. 22.
(**d**) 1972. c. 22.
(**e**) 1954. c. 33.

Validity of company transactions

3. In favour of a person dealing with a company in good faith, any transaction decided on by the directors shall be deemed to be one which it is within the capacity of the company to enter into, and the power of the directors to bind the company shall be deemed to be free of any limitation under the memorandum or articles of association; and a party to a transaction so decided on shall not be bound to enquire as to the capacity of the company to enter into it or as to any such limitation on the powers of the directors, and shall be presumed to have acted in good faith unless the contrary is proved.

Pre-incorporation contracts

4. Where a contract purports to be made by a company, or by a person as agent for a company, at a time when the company has not been formed, then subject to any agreement to the contrary the contract shall have effect as a contract entered into by the person purporting to act for the company or as agent for it, and he shall be personally liable on the contract accordingly.

Publication of registered documents

5.—(1) The registrar of companies shall cause to be published in the Belfast Gazette notice of the issue or receipt by him of documents of any of the following descriptions (stating in the notice the name of the company, the description of the document and the date of issue or receipt), that is to say—

(*a*) any certificate of incorporation of a company;

(*b*) any document making or evidencing an alteration in the memorandum or articles of association of a company;

(*c*) any return relating to a company's register of directors, or notification of a change amongst its directors;

(*d*) a company's annual return;

(*e*) any notice of the situation of a company's registered office, or of any change therein;

(*f*) any copy of a winding-up order in respect of a company;

(*g*) any order for the dissolution of a company on a winding up;

(*h*) any return by a liquidator of the final meeting of a company on a winding up;

and in the following provisions of this Article "official notification" means, in relation to anything stated in a document of any of those descriptions, the notification of that document in the Belfast Gazette under this Order and, in relation to the appointment of a liquidator in a voluntary winding up, the notification thereof in the Belfast Gazette under section 275 of the Act of 1960, and "officially notified" shall be construed accordingly.

(2) A company shall not be entitled to rely against other persons on the happening of any of the following events, that is to say—

(*a*) the making of a winding-up order in respect of the company, or the appointment of a liquidator in a voluntary winding up of the company; or

(*b*) any alteration of the company's memorandum or articles of association; or

(*c*) any change among the company's directors; or

(*d*) (as regards service of any document on the company) any change in the situation of the company's registered office;

if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned, or if the material time fell on or before the fifteenth day after the date of official notification (or, where the fifteenth day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

(3) For the purpose of paragraph (2) "non-business day" means a Saturday or Sunday, Christmas Day, Good Friday or any other day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(f).

Alteration of memorandum or articles of association

6.—(1) Where any alteration is made in a company's memorandum or articles of association by any statutory provision, whether contained in an Act of Parliament or in an instrument made under an Act, a printed copy of the Act or instrument shall not later than fifteen days after that provision comes into force be forwarded to the registrar of companies and recorded by him; and where a company is required by this Order or otherwise to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles of association (other than a special resolution under section 5 of the Act of 1960), the company shall send with it a printed copy of the memorandum or articles as altered.

(2) Where before the coming into operation of this Order—

(*a*) an alteration has been made in a company's memorandum or articles of association by any statutory provision, and a printed copy of the relevant Act or instrument has not been sent to the registrar of companies; or

(*b*) an alteration has been made in a company's memorandum or articles of association in any manner, and a printed copy of the memorandum or articles as altered has not been sent to him;

such a copy shall be sent to him within one month after the coming into operation of this Order.

(3) In this Article "Act of Parliament" includes an Act of the Parliament of the United Kingdom.

(4) If a company fails to comply with any of the provisions of this Article, the company and any officer of the company who is in default shall be liable to a default fine.

Business letters and order forms

7.—(1) Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company, that is to say—

(*a*) the place of registration of the company, and the number with which it is registered;

(*b*) the address of its registered office; and

(*c*) in the case of a limited company exempt from the obligation to use the word "limited" as part of its name, the fact that it is a limited company;

(f) 1971. c. 80.

and, if in the case of a company having a share capital there is on the stationery used for any such letters or on the order forms a reference to the amount of share capital, the reference shall be to paid-up share capital.

(2) If a company fails to comply with this Article, the company shall be liable to a fine not exceeding £50; and if an officer of a company or any person on its behalf issues or authorises the issue of any business letter or order form not complying with this Article, he shall be liable to a fine not exceeding £50.

Application of the Act of 1960

8.—(1) Section 383 of the Act of 1960 (which enables certain provisions of it to be extended to unregistered companies) shall have effect as if this Order were mentioned in Schedule 10 to that Act with an entry in column 3 of that Schedule to the effect that this Order is to apply so far only as may be specified by regulations under section 383 and to such bodies corporate as may be so specified, and as if sections 104 (registered office) and 385 (service of documents) were so mentioned (and section 385 were not included in the last entry in the Schedule).

(2) The modifications of this Order that may be made by regulations under section 383 shall include the extension of Articles 5 and 6 to additional matters (and in particular to the instruments constituting or regulating a company as well as to alterations thereof).

Dated 20th day of October 1972.

W. S I. Whitelaw,
One of Her Majesty's Principal Secretaries of State

EXPLANATORY NOTE

(This note is not part of the Order, but is intended to indicate its general purport.)

This Order brings company law in Northern Ireland into conformity with certain European Economic Community requirements. Amongst other things, it modifies the ultra vires doctrine in regard to a company's powers to enter into transactions and imposes personal liability in certain circumstances for a company's pre-incorporation contracts. The Order also provides for the official notification by the registrar of certain registered documents by means of publication in the Belfast Gazette and for the publication of additional information on a company's business letters and order forms.