
STATUTORY INSTRUMENTS

2006 No. 1183

The Takeovers Directive (Interim Implementation) Regulations 2006

PART 1

General

Citation and Commencement

1. These Regulations may be cited as the Takeovers Directive (Interim Implementation) Regulations 2006 and shall come into force on 20th May 2006.

Interpretation

2.—(1) In these Regulations—

“Code” means the City Code on Takeovers and Mergers and the Rules of Procedure of the Panel’s Hearings Committee as they stand immediately before the day these Regulations are made and are expressed to have effect on 20th May 2006;

“EEA State” means a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time);

“Panel” means the Panel on Takeovers and Mergers;

“regulated market” has the meaning given by Article 1(13) of Directive [93/22/EEC](#) on investment services in the securities field⁽¹⁾;

“takeover bid” has the same meaning as in the Takeovers Directive;

“Takeovers Directive” means Directive [2004/25/EC](#) of the European Parliament and of the Council on Takeover Bids⁽²⁾;

“voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances;

“voting shares” means shares carrying voting rights.

(2) In these Regulations “rules” means rules in the Code insofar as necessary to implement Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive or arising out of or related to obligations in those Articles, including rules which—

(a) confer on the Panel the power to—

- (i) give a direction to a person to secure compliance with a rule; or
- (ii) order a person to pay compensation if he is in breach of a rule; or
- (iii) impose sanctions on a person who has acted in breach of a rule or failed to comply with a direction;

(1) O.J. No. L 141, 11.6.1993, p.27.

(2) O.J. No. L 142, 30.4.2004 p.12.

- (b) make provision for a decision of the Panel to be reviewed by a committee of the Panel and for a decision of that committee to be appealed to an independent tribunal;
 - (c) make provision for fees or charges to be payable to the Panel for the purpose of meeting its expenses;
 - (d) make provision subject to exceptions or exemptions;
 - (e) authorise the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances;
 - (f) provide for the Panel to make rulings on the interpretation, application or effect of rules;
 - (g) provide for rulings in sub-paragraph (f) to have binding effect.
- (3) For the purposes of regulations 8 and 24—
- (a) “officer” includes director, manager or secretary;
 - (b) an officer is “in default” if he authorises or permits, participates in, or fails to take all reasonable steps to prevent, a contravention.
- (4) Except as provided in paragraph (5), in these Regulations “court”, in relation to a company, means—
- (a) in Great Britain, the court having jurisdiction to wind up the company; and
 - (b) in Northern Ireland, the High Court.
- (5) For the purposes of regulations 11, 17 and 22 “court” means the High Court or, in Scotland, the Court of Session.

PART 2

The Takeover Panel

CHAPTER 1

The Panel and its rules

The rules

3. The rules shall have effect.

The Panel

4.—(1) For the purposes of these Regulations, a reference to the functions of the Panel is a reference to functions provided for in this Part.

- (2) The Panel shall supervise takeover bids for the purposes of the rules.

(3) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions.

- (4) The Panel may make arrangements for any of its functions to be discharged by—

- (a) a committee or sub-committee of the Panel; or
- (b) an officer or member of staff of the Panel, or a person acting as such.

Publication of the Code

5.—(1) The Code must be made available to the public, with or without payment, in whatever way the Panel thinks appropriate.

(2) A person is not to be taken to have contravened a rule if he shows that at the time of the alleged contravention the Code had not been made available as required by paragraph (1).

(3) The production of a document purporting to be a printed copy of the Code endorsed with a certificate signed by an officer of the Panel authorised by it for that purpose and stating—

(a) that it is a true copy of the Code, and

(b) that on a specified date the Code was made available to the public as required by paragraph (1),

is evidence (or in Scotland sufficient evidence) of the facts contained in the certificate.

(4) A certificate purporting to be signed as mentioned in paragraph (3) is to be treated as having been properly signed unless the contrary is shown.

(5) A person who wishes in any legal proceedings to rely on the Code may require the Panel to endorse a copy of the Code with a certificate of the kind mentioned in paragraph (3).

CHAPTER 2

Information

Power to require documents and information

6.—(1) The Panel may by notice in writing require a person—

(a) to produce any documents that are specified or described in the notice;

(b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.

(2) A requirement under paragraph (1) must be complied with—

(a) at a place specified in the notice; and

(b) before the end of such reasonable period as may be so specified.

(3) This regulation applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions.

(4) The Panel may require—

(a) any document produced to be authenticated, or

(b) any information provided (whether in a document or otherwise) to be verified,

in such manner as it may reasonably require.

(5) The Panel may authorise a person to exercise any of its powers under this regulation.

(6) A person exercising a power by virtue of paragraph (5) must, if required to do so, produce evidence of his authority to exercise the power.

(7) The production of a document in pursuance of this regulation does not affect any lien that a person has on the document.

(8) The Panel may take copies of or extracts from a document produced in pursuance of this regulation.

(9) A reference in this regulation to the production of a document includes a reference to the production of—

(a) a hard copy of information recorded otherwise than in hard copy form; or

(b) information in a form from which a hard copy can be readily obtained.

(10) A person is not required by this regulation to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

Restrictions on disclosure

7.—(1) This regulation applies to information (in whatever form)—

- (a) relating to the private affairs of an individual, or
- (b) relating to any particular business,

that is provided to the Panel in connection with the exercise of its functions.

(2) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business.

(3) Paragraph (2) does not apply to any disclosure of information that—

- (a) is made for the purpose of facilitating the carrying out by the Panel of any of its functions;
- (b) is made to a person specified in Part 1 of Schedule 1;
- (c) is of a description specified in Part 2 of that Schedule; or
- (d) is made in accordance with Part 3 of that Schedule.

(4) Paragraph (2) does not apply to—

- (a) the disclosure by an authority within paragraph (5) of information disclosed to it by the Panel in reliance on paragraph (3);
- (b) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority within paragraph (5).

(5) The authorities within this paragraph are—

- (a) the Financial Services Authority;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises functions of a public nature, under legislation in an EEA State other than the United Kingdom, that are similar to the Panel's functions or those of the Financial Services Authority.

(6) This regulation does not prohibit the disclosure of information if the information is or has been available to the public from any other source.

(7) Nothing in this regulation authorises the making of a disclosure in contravention of the Data Protection Act 1998(3).

Offence of disclosure in contravention of regulation 7

8.—(1) A person who discloses information in contravention of regulation 7 is guilty of an offence, unless—

- (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in regulation 7(1); or
- (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(2) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum (or both).

(3) 1998 c. 29.

(3) Where a company or other body corporate commits an offence under this regulation, an offence is also committed by every officer of the company or other body corporate who is in default.

(4) Proceedings for an offence under this regulation are not to be brought—

- (a) in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland except by or with the consent of the Department of Enterprise, Trade and Investment or the Director of Public Prosecutions for Northern Ireland.

CHAPTER 3

Co-operation

Duty of co-operation

9.—(1) The Panel must take such steps as it considers appropriate to co-operate with—

- (a) the Financial Services Authority;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Services Authority.

(2) The Financial Services Authority must take such steps as it considers appropriate to co-operate with—

- (a) the Panel;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Financial Services Authority to be similar to those of the Panel.

(3) Co-operation may include the sharing of information that the Panel or the Financial Services Authority, as the case may be, is not prevented from disclosing.

CHAPTER 4

Contravention of rules etc.

Failure to comply with rules about bid documentation

10.—(1) This regulation applies where there is a takeover bid to which the offer document rules apply.

(2) Where an offer document published in respect of the bid does not comply with offer document rules, an offence is committed by—

- (a) the person making the bid; and
- (b) where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published.

(3) A person commits an offence under paragraph (2) only if—

- (a) he knew that the offer document did not comply, or was reckless as to whether it complied; and
- (b) he failed to take all reasonable steps to secure that it did comply.

(4) Where a response document published in respect of the bid does not comply with response document rules, an offence is committed by any director or other officer of the company for which the bid is made, who—

- (a) knew that the response document did not comply, or was reckless as to whether it complied; and
- (b) failed to take all reasonable steps to secure that it did comply.

(5) Where an offence is committed under subsection (2)(b) or (4) by a company or other body corporate (“the relevant body”)—

- (a) subsection (2)(b) has effect as if the reference to a director, officer or member of the person making the bid included a reference to a director, officer or member of the relevant body;
- (b) subsection (4) has effect as if the reference to a director or other officer of the company referred to in subsection (1) included a reference to the director, officer or member of the relevant body.

(6) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) Proceedings for an offence under this regulation are not to be brought—

- (a) in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland except by or with the consent of the Department of Enterprise, Trade and Investment or the Director of Public Prosecutions for Northern Ireland.

(8) Nothing in this regulation affects any power of the Panel in relation to the enforcement of its rules.

Enforcement by the court

11.—(1) If, on the application of the Panel, the court is satisfied—

- (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or
- (b) that a person has contravened a rule-based requirement or a disclosure requirement,

the court may make any order it thinks fit to secure compliance with the requirement.

(2) Except as provided by paragraph (1), no person—

- (a) has a right to seek an injunction, or
- (b) in Scotland, has title or interest to seek an interdict or an order for specific performance,

to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.

No action for breach of statutory duty etc.

12.—(1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.

(2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or affect the validity of any other thing.

Interpretation of Chapter 4

13. In this Chapter—

“contravene” includes fail to comply;

“contravention” includes failure to comply;

“disclosure requirement” means a requirement imposed under regulation 6;

“offer document” means a document required to be published by Rules 30.1 and 32.1 of the Code;

“offer document rules” means rules set out in Rules 24 and 27 of the Code to the extent that they are referred to in section 10(e) of the Introduction to the Code;

“officer” includes director, manager or secretary;

“response document” means a document required to be published by Rules 30.2 and 32.6(a) of the Code;

“response document rules” means rules set out in Rules 25 and 27 of the Code to the extent that they are referred to in section 10(e) of the Introduction to the Code;

“rule-based requirement” means a requirement imposed by or under rules.

CHAPTER 5

Miscellaneous and supplementary

Recovery of fees or charges

14. A fee or charge payable by any person by virtue of the rules is a debt due from that person to the Panel, and is recoverable accordingly.

Panel as party to proceedings

15. In the exercise of its functions the Panel is capable (despite being an unincorporated body) of—

- (a) bringing proceedings under this Part in its own name;
- (b) bringing or defending any other proceedings in its own name.

Exemption from liability in damages

16.—(1) Neither the Panel, nor any person within paragraph (2), is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel’s functions.

(2) A person is within this paragraph if—

- (a) he is (or is acting as) a member, officer or member of staff of the Panel; or
- (b) he is a person authorised under regulation 6(5).

(3) Paragraph (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998⁽⁴⁾ (acts of public authorities incompatible with Convention rights).

Privilege against self-incrimination

17.—(1) A statement made by a person in response to—

(4) 1998 c. 42.

- (a) a requirement under regulation 6(1), or
- (b) an order made by the court under regulation 11 to secure compliance with such a requirement,

may not be used against him in criminal proceedings in which he is charged with an offence to which this paragraph applies.

(2) Paragraph (1) applies to any offence other than an offence under one of the following provisions (which concern false statements made otherwise than on oath)—

- (a) section 5 of the Perjury Act 1911⁽⁵⁾;
- (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995⁽⁶⁾;
- (c) Article 10 of the Perjury (Northern Ireland) Order 1979⁽⁷⁾.

Amendments and modifications to Financial Services and Markets Act 2000

18.—(1) Section 348 of the Financial Services and Markets Act 2000⁽⁸⁾ does not apply to—

- (a) the disclosure by an authority to which paragraph (2) applies of confidential information disclosed to it by the Financial Services Authority in reliance on subsection (1) of that section;
- (b) the disclosure of such information by a person obtaining it directly or indirectly from an authority to which paragraph (2) applies.

“Confidential information” has the meaning given by section 348(2) of that Act.

(2) This paragraph applies to—

- (a) the Panel;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises functions of a public nature, under legislation in an EEA State other than the United Kingdom, that are similar to the Financial Services Authority’s functions or those of the Panel.

(3) The Financial Services and Markets Act 2000 is amended as follows.

(4) In section 143 (power to make rules endorsing the City Code on Takeovers and Mergers etc.), after subsection (1) insert—

“(1A) The Authority may not make endorsing rules in respect of provisions of that Code that are given effect by regulation 3 of the Takeovers Directive (Interim Implementation) Regulations 2006.”

(5) At the end of section 349 (exceptions from section 348) insert—

“(8) Section 348 has effect subject to regulation 18(1) of the Takeovers Directive (Interim Implementation) Regulations 2006.”

(5) 1911 c. 6.
(6) 1995 c. 39.
(7) S.I. 1979/1714 (N.I. 19).
(8) 2000 c. 8.

PART 3

Impediments to Takeovers

CHAPTER 1

Interpretation

Interpretation of Part

19.—(1) In this Part—

“company” means—

- (a) a company within the meaning of section 735 of the Companies Act 1985⁽⁹⁾;
- (b) an unregistered company within the meaning of section 718 of that Act⁽¹⁰⁾;
- (c) a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986⁽¹¹⁾; or
- (d) an unregistered company within the meaning of Article 667 of that Order⁽¹²⁾;

“daily default fine” has the meaning in section 730(4) of the Companies Act 1985 (or in the case of Northern Ireland, Article 678(4) of the Companies (Northern Ireland) Order 1986;

“offeror” has the same meaning as in the Takeovers Directive;

“offer period”, in relation to a takeover bid, means the time allowed for acceptance of the bid by—

- (a) rules in the Code giving effect to Article 7(1) of the Takeovers Directive; or
- (b) where the rules giving effect to that Article which apply to the bid are those of an EEA State other than the United Kingdom, those rules;

“opted-in company” means a company in relation to which—

- (a) an opting-in resolution has effect; and
- (b) the conditions in regulation 20(2) and (4) continue to be met;

“opting-in resolution” has the meaning given by regulation 20(1);

“opting-out resolution” has the meaning given by regulation 20(5);

“registrar” has the meaning in section 744 of the Companies Act 1985 (or in the case of Northern Ireland in Article 653(2) of the Companies (Northern Ireland) Order 1986).

(2) For the purposes of this Part—

- (a) securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares;
- (b) debentures issued by a company are treated as shares in the company if they carry voting rights.

⁽⁹⁾ 1985 c. 6.

⁽¹⁰⁾ Section 718 was amended by regulation 75 of, and by paragraph 9 of Schedule 8 to, [S.I. 1996/2827](#).

⁽¹¹⁾ [S.I. 1986/1032 \(N.I. 6\)](#).

⁽¹²⁾ Article 667 was amended by regulation 75 of, and by paragraph 8 of Schedule 8 to, [S.R. 1997/251](#).

CHAPTER 2

Opting in and opting out

Opting in and opting out

20.—(1) A company may by special resolution (an “opting-in resolution”) opt in for the purposes of this Part if the following three conditions are met in relation to the company.

(2) The first condition is that the company has voting shares admitted to trading on a regulated market.

(3) The second condition is that—

(a) the company’s articles of association—

(i) do not contain any such restrictions as are mentioned in Article 11 of the Takeovers Directive; or

(ii) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article; and

(b) those articles do not contain any other provision which would be incompatible with that Article.

(4) The third condition is that—

(a) no shares conferring special rights in the company are held by—

(i) a minister,

(ii) a nominee of, or any other person acting on behalf of, a minister, or

(iii) a company directly or indirectly controlled by a minister, and

(b) no such rights are exercisable by or on behalf of a minister under any enactment.

(5) A company may revoke an opting-in resolution by a further special resolution (an “opting-out resolution”).

(6) For the purposes of paragraph (3), a reference in Article 11 of the Takeovers Directive to Article 7(1) or 9 of that Directive is to be read as referring to rules in the Code giving effect to the relevant Article.

(7) In paragraph (4) “minister” means—

(a) the holder of an office in Her Majesty’s Government in the United Kingdom,

(b) the Scottish Ministers,

(c) a Minister within the meaning given by section 7(3) of the Northern Ireland Act 1998⁽¹³⁾, and for the purposes of that paragraph “minister” also includes the Treasury, the Board of Trade, the Defence Council and the National Assembly for Wales.

Further provisions about opting-in and opting-out resolutions

21.—(1) An opting-in resolution or an opting-out resolution must specify the date from which it is to have effect (the “effective date”).

(2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.

(3) The second and third conditions in regulation 20 must be met at the time when an opting-in resolution is passed, but the first one does not need to be met until the effective date.

(13) 1998 c. 47.

(4) An opting-in resolution passed before the time when voting shares of the company are admitted to trading on a regulated market complies with the requirement in paragraph (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.

(5) The effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which a copy of the opting-in resolution was forwarded to the registrar.

(6) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent the second condition in regulation 20 from being met is of no effect until the effective date of an opting-out resolution passed by the company.

CHAPTER 3

Consequences of opting in

Effect on contractual restrictions

22.—(1) The following provisions have effect where a takeover bid is made for an opted-in company.

(2) An agreement to which this regulation applies is invalid in so far as it places any restriction—

- (a) on the transfer to the offeror, or at his direction to another person, of shares in the company during the offer period;
- (b) on the transfer to any person of shares in the company at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company;
- (c) on rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid;
- (d) on rights to vote at a general meeting of the company that—
 - (i) is the first such meeting to be held after the end of the offer period; and
 - (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.

(3) This regulation applies to an agreement—

- (a) entered into between a person holding shares in the company and another such person on or after 21st April 2004, or
- (b) entered into at any time between such a person and the company,

and it applies to such an agreement even if the law applicable to the agreement (apart from this paragraph) is not the law of a part of the United Kingdom.

(4) The reference in paragraph (2)(c) to rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid includes a reference to rights to vote on a written resolution concerned with that question.

(5) For the purposes of paragraph (2)(c), action which might result in the frustration of a bid is any action of that kind specified by rules in the Code giving effect to Article 9 of the Takeovers Directive.

(6) If a person suffers loss as a result of any act or omission that would (but for this regulation) be a breach of an agreement to which this regulation applies, he is entitled to compensation, of such amount as the court considers just and equitable, from any person who would (but for this paragraph) be liable to him for committing or inducing the breach.

(7) A reference in this regulation to voting shares in the company does not include—

- (a) debentures; or
- (b) shares carrying rights to vote that, under the company's articles of association, arise only where specified pecuniary advantages are not provided.

In sub-paragraph (b) “rights to vote” means rights to vote at general meetings of the company.

Power of offeror to require general meeting to be called

23.—(1) Where a takeover bid is made for an opted-in company, section 368 of the Companies Act 1985(**14**) (extraordinary general meeting on members' requisition) and section 378 of that Act(**15**) (extraordinary and special resolutions) have effect as follows.

(2) Section 368 has effect as if a member’s requisition included a requisition of a person who—

- (a) is the offeror in relation to the takeover bid; and
- (b) holds at the date of the deposit of the requisition shares amounting to not less than 75% in value of all the voting shares in the company.

(3) In relation to a general meeting of the company that—

- (a) is the first such meeting to be held after the end of the offer period, and
- (b) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company,

section 378(2) (meaning of “special resolution”) has effect as if “14 days' notice” were substituted for “21 days' notice”.

(4) A reference in this regulation to voting shares in the company does not include—

- (a) debentures; or
- (b) shares carrying rights to vote that, under the company’s articles of association, arise only where specified pecuniary advantages are not provided.

In sub-paragraph (b) “rights to vote” means rights to vote at general meetings of the company.

(5) In its application to Northern Ireland, references in this regulation to sections 368 and 378 of the Companies Act 1985 are to be read, respectively, as references to Articles 376(**16**) and 386(**17**) of the Companies (Northern Ireland) Order 1986.

CHAPTER 4

Supplementary

Communication of decisions

24.—(1) A company that has passed an opting-in resolution or an opting-out resolution must notify—

- (a) the Panel; and
- (b) where the company—
 - (i) has voting shares admitted to trading on a regulated market in an EEA State other than the United Kingdom, or
 - (ii) has requested such admission,

the authority designated by that State as the supervisory authority for the purposes of Article 4.1 of the Takeovers Directive.

(14) Section 368 was amended by section 145 of, and by paragraph 9 of Schedule 19 to, the Companies Act 1989 (c. 40), and by regulation 4 of, and by paragraph 19 of the Schedule to, [S.I. 2003/1116](#).

(15) Section 378 was amended by section 115(3) of the Companies Act 1989 (c. 40) and by regulation 4 of, and by paragraph 24 of the Schedule to, [S.I. 2003/1116](#).

(16) Article 376 was amended by Article 78 of, and by paragraph 9 of Schedule 5 to, [S.I. 1990/1504 \(N.I. 10\)](#) and by paragraph 20 of the Schedule to [S.R. 2004/275](#).

(17) Article 386 was amended by Article 50 of, and by paragraph 25 of Schedule 5 to, [S.I. 1990/1504 \(N.I. 10\)](#) and by paragraph 20 of the Schedule to [S.R. 2004/275](#).

(2) Notification must be given within 15 days after the resolution is passed and, if any admission or request such as is mentioned in paragraph (1)(b) occurs at a later time, within 15 days after that time.

(3) If a company fails to comply with this regulation, an offence is committed by—

- (a) the company; and
- (b) every officer of it who is in default.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, to a daily default fine not exceeding £100.

PART 4

Directors' Report etc.

Matters to be dealt with in directors' report

25.—(1) In this Part “directors' report” means the report prepared under section 234 of the Companies Act 1985(18)(or in the case of Northern Ireland, Article 242 of the Companies (Northern Ireland) Order 1986)(19).

(2) This Part applies to a directors' report for a financial year beginning on or after 20th May 2006, if the company had securities carrying voting rights admitted to trading on a regulated market at the end of that year.

26.—(1) In addition to the matters required by section 234ZZA of the Companies Act 1985(20) (or in the case of Northern Ireland, Article 242ZZA of the Companies (Northern Ireland) Order 1986(21)) to be contained in the directors' report, that report shall contain detailed information, by reference to the end of that year, on the following matters—

- (a) the structure of the company’s capital, including in particular—
 - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company; and
 - (ii) where there are two or more such classes, the percentage of the total share capital represented by each class;
- (b) any restrictions on the transfer of securities in the company, including in particular—
 - (i) limitations on the holding of securities; and
 - (ii) requirements to obtain the approval of the company, or of other holders of securities in the company, for a transfer of securities;
- (c) in the case of each person with a significant direct or indirect holding of securities in the company, such details as are known to the company of—
 - (i) the identity of the person;
 - (ii) the size of the holding; and
 - (iii) the nature of the holding;

(18) 1985 c. 6; section 234 was inserted by Part 1 of the Companies Act 1989 (c. 40) and substituted by regulation 2 of S.I. 2005/1011.

(19) S.I. 1986/1032 (N.I.6); Article 242 was inserted by Article 10 of S.I. 1990/593 (N.I.5) and substituted by regulation 2 of S.R. 2005/61.

(20) Section 234ZZA was substituted by regulation 2 of S.I. 2005/1011.

(21) Article 242ZZA was substituted by regulation 2 of S.R.2005/61.

- (d) in the case of each person who holds securities carrying special rights with regard to control of the company—
 - (i) the identity of the person; and
 - (ii) the nature of the rights;
 - (e) where—
 - (i) the company has an employees' share scheme, and
 - (ii) shares to which the scheme relates have rights with regard to control of the company that are not exercisable directly by the employees,
how those rights are exercisable;
 - (f) any restrictions on voting rights, including in particular—
 - (i) limitations on voting rights of holders of a given percentage or number of votes;
 - (ii) deadlines for exercising voting rights; and
 - (iii) arrangements by which, with the company's co-operation, financial rights carried by securities are held by a person other than the holder of the securities;
 - (g) any agreements between holders of securities that are known to the company and may result in restrictions on the transfer of securities or on voting rights;
 - (h) any rules that the company has about—
 - (i) appointment and replacement of directors; or
 - (ii) amendment of the company's articles of association;
 - (i) the powers of the company's directors, including in particular any powers in relation to the issuing or buying back by the company of its shares;
 - (j) any significant agreements to which the company is a party that take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects of any such agreements;
 - (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment (whether through resignation, purported redundancy or otherwise) that occurs because of a takeover bid.
- (2) For the purposes of paragraph (1)(a) a company's capital includes any securities in the company that are not admitted to trading on a regulated market.
- (3) For the purposes of paragraph (1)(c) a person has an indirect holding of securities if—
- (a) they are held on his behalf; or
 - (b) he is able to secure that rights carried by the securities are exercised in accordance with his wishes.
- (4) Paragraph (1)(j) does not apply to an agreement if—
- (a) disclosure of the agreement would be seriously prejudicial to the company; and
 - (b) the company is not under any other obligation to disclose it.
- (5) The directors' report shall also contain any necessary explanatory material with regard to information that is required to be included in the report by paragraph (1).
- (6) In this regulation "securities" means shares or debentures.

Summary financial statement

27. If, in accordance with section 251 of the Companies Act 1985(22) (or as the case may be Article 259 of the Companies (Northern Ireland) Order 1986(23)), a company sends to an entitled person a summary financial statement instead of a copy of its directors' report the company shall—

- (a) include in the statement the explanatory material required to be included in the directors' report by regulation 26(5); or
- (b) send that material to the entitled person at the same time as it sends the statement.

For the purposes of paragraph (b), section 251(2A) to (2E)(24) (or as the case may be Article 259(2A) to (2E)(25)) applies in relation to the material referred to in that paragraph as it applies in relation to a summary financial statement.

Expressions in the Companies Act 1985

28. Except as otherwise provided expressions that are defined for the purposes of Part 7 of the Companies Act 1985(26) (or in the case of Northern Ireland, Part 8 of the Companies (Northern Ireland) Order 1986(27)) have the same meaning in this Part.

PART 5

Squeeze-out and sell-out

Takeover offers

29. This Part applies to any takeover offer where the date of the offer as defined in paragraph 11 of Schedule 2 is on or after 20 May 2006.

30. Where a takeover offer is made for a company that has securities carrying voting rights admitted to trading on a regulated market, Part 13A of the Companies Act 1985(28) (or in the case of Northern Ireland, Part 14A of the Companies (Northern Ireland) Order 1986(29)) shall not apply and Schedule 2 to these Regulations shall apply.

31. In this Part “company” means—

- (a) a company within the meaning of section 735 of the Companies Act 1985 (30);
- (b) an unregistered company within the meaning of section 718 of that Act(31);
- (c) a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986(32); or
- (d) an unregistered company within the meaning of Article 667 of that Order(33).

(22) Section 251 was substituted by section 15 of the Companies Act 1989 (c. 40) and further amended under section 257 of the Companies Act 1985 (c. 6).

(23) Article 259 was substituted by Article 17 of S.I. 1990/593 (N.I.5) and further amended under Article 265 of S.I. 1986/1032 (N.I.6).

(24) Section 251(2A) to (2E) was inserted by Article 14 of S.I. 2000/3373 and section 251(2C) was amended by regulation 12(1), (5) and (6)(a) of S.I.2005/1011.

(25) Article 259(2A) to (2E) was inserted by Article 12 of S.R.2003/3 and amended by regulation 11 of S.R.2005/61.

(26) Part 7 was inserted by section 2 of the Companies Act 1989 (c. 40).

(27) Part 8 was amended by Article 3 of S.I. 1990/593 (N.I.5).

(28) Part 13A was inserted by section 172 of, and by Schedule 12 to, the Financial Services Act 1986 (c. 60).

(29) Part 14A was inserted by Article 26 of S.I. 1989/2404 (N.I.18).

(30) 1985 c. 6.

(31) Section 718 was amended by regulation 75 of, and paragraph 9 of Schedule 8 to, S.I. 1996/2827.

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

(33) Article 667 was amended by S.R. 2004/335.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

32. Except as otherwise provided expressions that are defined for the purposes of Part 13A of the Companies Act 1985 (or in the case of Northern Ireland, Part 14A of the Companies (Northern Ireland) Order 1986) have the same meaning in this Part.

Gerry Sutcliffe
Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
Department of Trade and Industry

25th April 2006