
STATUTORY INSTRUMENTS

1992 No. 225

The Uncertificated Securities Regulations 1992

PART IV

ENTITLEMENT

CHAPTER I

ENTITLEMENT

Entitlement to a unit of a security

22.—(1) With respect to each unit of an uncertificated security there shall be a power, which may only be held and exercised by a controller, to instruct the registration of a person as the holder of the unit on the appropriate register; this power is known in these Regulations as the “entitlement” to the unit.

(2) Whether or not a controller has an entitlement to a unit of a security is determined by whether the controller is recorded on a record of entitlements as having such an entitlement, save that where, and for as long as, the sum of the entitlements on the Operator’s and company’s records of entitlements exceeds the units of a security in issue, the question of whether the controller has the entitlement is in addition to be determined by ascertaining whether the controller would have been recorded with it if the excess had not arisen.

Entitlement as an interest in shares for the purposes of the 1985 Act

23.—(1) An entitlement shall not be an interest in a share for any purpose of the following provisions of the 1985 Act:

- (a) Part VI; and
- (b) sections 324 to 326, 328 and 346, together with Schedule 13.

(2) This regulation is without prejudice to the provisions of paragraph 1 of Schedule 8 to these Regulations (which provides that an account holder for whom an entitlement to a share is held has an interest in the share concerned inter alia for the purposes of Part VI of the 1985 Act).

The Operator’s record of entitlements

24.—(1) It is the duty of the Operator to establish and maintain a record of holders of entitlements to units of each security which it admits into the system.

(2) The Operator shall enter into the Operator’s record of entitlements for a security the name of each commercial and alternative company controller holding an entitlement to a unit of the security concerned, together with the number of entitlements held by that controller.

(3) It is the duty of the Operator, in respect of each record of entitlements maintained by it, to transmit to the company concerned, by means of the Operator’s part of the system, the identity of, and number of entitlements held by, each controller recorded on the record at an identified point of time on each working day, at the latest by the end of the next working day.

Company's record of entitlements

25.—(1) It is the duty of every company having in issue an uncertificated security to establish and maintain a record of holders of entitlements to units of the security concerned.

(2) The company shall enter into the company's record of entitlements for a particular security the name of each primary company controller holding an entitlement to a unit of the security concerned, together with the number of entitlements held by that controller.

Location and inspection of records of entitlements

26.—(1) Section 353(1), (2) and (4) of the 1985 Act (Location of register) shall apply with respect to a company's record of entitlements as it applies with respect to a company's register of members maintained under that Act. The information with respect to the Operator's record of entitlements received by the company under regulation 24(3) for a day shall be kept until the company has received information in respect of a subsequent day and shall be kept by the company at the same place as the company's record of entitlements; section 353(4) of the 1985 Act shall apply with any necessary modifications.

(2) Section 356 of the 1985 Act (Inspection of register and index) shall apply to a company's record of entitlements and the information with respect to the Operator's record of entitlements received by the company under regulation 24(3), for the period during which the company is required to keep that information under paragraph (1) above, as it applies to a company's register of members maintained under that Act; section 723A of the 1985 Act shall apply, with any necessary modifications for the purposes of section 356 as applied by this paragraph as it applies generally for the purposes of section 356.

(3) Where, pursuant to section 353(1)(b) of the 1985 Act as applied by paragraph (1), a company's record of entitlements or the information with respect to the Operator's record of entitlements received by the company under regulation 24(3) is kept at the office of some person other than the company, and by reason of any default of that person the company fails to comply with section 353(2) or 356 of that Act as applied by this regulation, section 357 of that Act shall apply so as to make that person liable to the same penalties as if the person were an officer of the company in default and so as to extend the power of the Court under section 356(6) (as so applied) to the making of Orders against that person.

CHAPTER II

ENTITLEMENTS AND ACCOUNT HOLDERS

Account holders

27.—(1) As between a controller and his or its account holders, each entitlement held by the controller shall be expressly allocated by the controller as being exercisable for the benefit of the account holder for whom the entitlement is held by noting that the entitlement is held for that account holder in the controller's record of account holders for the security. Notwithstanding that there has been a failure to make such an express allocation, an entitlement held by the controller for an account holder shall remain held for that account holder.

(2) However as against any other person (including the Operator, any other controller and the company issuing the security) all entitlements to units of a security held by a controller shall be treated as being held in a single undivided pool and (save as otherwise provided under these Regulations) no notice is receivable by any such person that a particular entitlement is or was held for a particular person. Accordingly no notice is to be receivable by any other person that a transfer of an entitlement is being or has been effected without the instructions or authority of the account holder with respect to that entitlement.

(3) It is the duty of a controller, in issuing a proper instruction to register with respect to an entitlement, to instruct the registration of the account holder for whom it is held as the holder of the unit of a security concerned.

(4) This regulation is subject to regulation 53(5).

Controller's record of account holders

28.—(1) It is the duty of a controller to establish and maintain at least one record of his or its account holders with respect to a security. A controller may establish more than one record with respect to a security, splitting the entitlements held by him or it in the security between the records.

(2) A controller shall note on a record of account holders maintained by him or it with respect to a security:

- (a) the name and address of each of his or its account holders with respect to that security (in the case of persons acting jointly who are together treated as an account holder, the names of each such person together with the address of the first named); and
- (b) the number of entitlements to units of the security held by him or it for the account holder.

(3) Where a commercial controller, under paragraph (1), maintains more than one record of account holders for a security, the Operator may treat the entitlements, for the purposes of the system, as being held by separate controllers; in such a case these Regulations (other than regulation 29) shall apply as if the controller was a separate person acting as a commercial controller with respect to the entitlements so treated as being held by separate controllers.

(4) A record of account holders maintained by a controller shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, that entitlements recorded as being held for a person are in fact held for that person.

Insufficiency of entitlements

29.—(1) If at any time:

- (a) a controller holds less entitlements to a particular security than he or it ought to be holding if he or it had properly carried out his or its functions under these Regulations or (in the case of a commercial controller) under any agreement entered into for the purposes of regulation 13(1);
- (b) it is not reasonably practicable to identify and rectify the reason for the deficiency or the deficiency is not otherwise remedied by the controller; and
- (c) it is necessary for any purpose to determine for whom the controller should hold the entitlements to the security,

paragraphs (2) to (4) shall have effect.

(2) If at the time the question falls to be determined the controller concerned holds any relevant entitlements for an account holder, those entitlements shall be held by the controller, to the extent necessary to remedy the shortfall, for the account holders of the controller, other than any person for whom a relevant entitlement is held, with respect to the security concerned. For this purpose a relevant entitlement is an entitlement to the security concerned held by the controller, being a body corporate:

- (a) for:
 - (i) itself or
 - (ii) a member of a group (within the meaning of section 262 of the 1985 Act) of which it is a member where it or such a member is acting with respect to the unit of a security

concerned as principal or as trustee (directly or indirectly) for persons who are all members of such a group; or

(b) for any other person:

(i) acting as a nominee with regard to the unit of a security concerned for the controller or a member of a group (within the meaning of section 262 of the 1985 Act) of which the controller is a member where the controller or such a group member is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for persons who are all members of such a group, or

(ii) acting as trustee (directly or indirectly) for persons who are all members of such a group;

regulation 28(3) shall not apply.

Where the controller is a partnership, for the purposes of this paragraph a relevant entitlement is an entitlement to a unit of the security concerned held by the partnership for a partner or for any person who is a person connected with the partner within the meaning of section 346 of the 1985 Act (taking references therein to a director of a company as references to the partner), where the partner or that person is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for persons who are partners or persons who are all such connected persons with respect to partners or for partners and such persons; regulation 28(3) shall not apply.

Where the controller is an individual, for the purposes of this paragraph a relevant entitlement is an entitlement to a unit of the security concerned held by him for himself or for any person who is a person connected with him within the meaning of section 346 of the 1985 Act (taking references therein to a director of a company as references to the individual), where he or that person is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for the controller or persons who are all such connected persons or for the controller and such persons; regulation 28(3) shall not apply.

(3) Otherwise (if, but only if, there remains at the time the question falls to be determined a shortfall of entitlements after the application of paragraph (2)) the entitlements shall be held for the account holders (other than any person for whom a relevant entitlement was held) in proportion to the entitlements which ought to be held for them by the controller.

(4) This regulation is without prejudice to any liability the controller may have incurred as a consequence of any breach of his or its duties and applies notwithstanding any entries on a controller's record of account holders.

(5) Paragraphs (2) to (4) shall also apply where a controller receives entitlements from another controller as a result of a transfer under regulation 12 and Schedule 1 or regulation 14 and:

(a) that other controller, in relation to the entitlements transferred, held less entitlements to a particular security than he or it ought to have been holding if he or it had properly carried out his or its functions under these Regulations; and

(b) it is not reasonably practicable to identify and rectify the reason for the deficiency;

for the purpose of establishing the persons for whom the entitlements are to be held by the controller.

They shall apply with any necessary modifications and as if the question for whom the entitlements transferred were held had fallen to be determined by the other controller immediately prior to the transfer.

CHAPTER III TRANSFERS OF ENTITLEMENTS

Transfer of entitlement

30.—(1) Subject to paragraph (2), an entitlement is transferred from one controller to another by the entry of the transferee of the entitlement as its holder in a record of entitlements.

The corresponding amendment of the entry in respect of the transferor is not required to effect the transfer, but the Operator or (as the case may be) the company shall debit the transferor with the entitlement.

(2) Where an entitlement is to be transferred from a primary company controller to a commercial (or alternative company) controller, or vice versa, transfer of the entitlement is effected by the crediting of the transferee, or (as the case may be) the debiting of the transferor, with the entitlement on the Operator's record of entitlements; the corresponding amendment to the company's record of entitlements not being required to effect the transfer.

It is however the duty of the company, having been notified of a transfer of an entitlement to or from a primary company controller, to amend its record of entitlements so as to reflect the transfer.

(3) Subject to these Regulations, it is the duty of (in the case of the Operator's record of entitlements) the Operator or (in the case of the company's record of entitlements) the company to effect a transfer of an entitlement if, but only if:

- (a) it is in receipt of a notification of a transaction with respect to the entitlement (and, if the notification has been given on conditions, those conditions have been satisfied); and
- (b) the transferor and (unless a primary company controller) the proposed transferee of the entitlement have consented to the transfer

(and, if the consent has been given on conditions, those conditions have been satisfied), (no consent as transferee being required from a primary company controller).

Notifications of transactions

31.—(1) A notification of a transaction must be received by the Operator unless the entitlements are to be transferred between primary company controllers only.

(2) For the purposes of these Regulations a notification of a transaction to the Operator is such notification of a proposed transfer of an entitlement, which is contained in such message or combination of messages from such person or persons and issued in such circumstances as the Operator recognises as a notification of a transaction under the Operator's part of the system.

(3) For the purposes of these Regulations, a notification of a transaction to the company is an instruction to effect the transfer of an entitlement, which is contained in a message issued by a primary company controller specifying the requisite particulars.

(4) For the purposes of paragraph (3), the requisite particulars are:

- (a) the name and address of the account holder (or where persons acting jointly are together the account holder, the names of each account holder and the address of the first named) on behalf of whom the transferee is to hold the entitlement;
- (b) the security concerned; and
- (c) the number of entitlements to be transferred.

Consent to transfers of entitlements by controllers

32.—(1) It is the duty of a controller to consent to the transfer of an entitlement as transferor if, but only if:

- (a) when requested to give his or its consent under the Operator's part of the system, he or it knows the total number of entitlements he or it is being requested to consent to the transfer of and the identity of the uncertificated security concerned;
- (b) when requested to give his or its consent under the Operator's part of the system, he or it knows the identity of the account holder in relation to whom he or it is being requested to give consent;
- (c) (in the case of a company controller) he or it is in receipt of an instruction from the account holder for whom the entitlement to be transferred is held to consent to the transfer;
- (d) (in the case of a commercial controller) he or it is authorised (where required, by an instruction) by the account holder to consent to the transfer of the entitlement; and
- (e) he or it holds an entitlement for the account holder, which he or it has not previously consented to the transfer of and which is not the subject of an instruction under regulation 33.

This paragraph is without prejudice to the provisions of Chapters II to IV of Part VI of these Regulations.

(2) In addition a company controller shall not consent to a transfer of an entitlement if, being requested to consent to the transfer of a number of entitlements by a communication by means of the Operator's part of the system, he or it cannot satisfy in full the request.

(3) Subject to regulation 14(7) it is the duty of a commercial or alternative company controller to consent to a transfer of an entitlement as transferee if, but only if:

- (a) when requested to give his or its consent under the Operator's part of the system, he or it knows the identity of the person for whom the entitlement is to be held;
- (b) he or it is authorised to hold the entitlement for that person; and
- (c) when requested to give his or its consent under the Operator's part of the system, he or it knows the number of entitlements he or it is being asked to consent to the transfer of and the identity of the uncertificated security concerned.

CHAPTER IV

Off-Market Transfers Where One Controller involved

Instruction to controller to hold for another

33.—(1) An account holder, for whom a controller holds an entitlement, may instruct the controller to hold the entitlement for another specified person in place of the account holder, provided the instruction sets out the requisite particulars.

For this purpose the requisite particulars are:

- (a) the name and address of the account holder (in the case of persons acting jointly who are together an account holder, the name and address of each of them);
- (b) the name and address of the person on whose behalf the controller is to hold the entitlement for the future (in the case of persons acting jointly who are together to be the account holder, the name of each of them and the address of the person first named in the instruction);
- (c) the security concerned; and
- (d) the number of entitlements concerned.

(2) In the case of a commercial controller, paragraph (1) is subject to any agreement between the controller and his or its account holder.

(3) It is the duty of a controller to give effect to an instruction received under this regulation by expressly re-allocating the entitlement as being held for the person specified by amending his or its record of account holders accordingly, provided that:

- (a) the controller holds sufficient entitlements to units of the security for the instructing account holder, which he or it has not previously consented to the transfer of and which have not been the subject of instructions under this regulation, to enable him or it to comply in full with the instruction; and
- (b) he or it has authority to hold the entitlements for the person specified.

This paragraph is without prejudice to the provisions of Chapters II to IV of Part VI of these Regulations.

(4) Upon a controller entering, under paragraph (3), the name of a person into a record of account holders as the person for whom an entitlement is held, the controller shall thereupon hold the entitlement for that person (who accordingly is thereupon the account holder with respect to the entitlement) in place of the person giving the instruction, notwithstanding that the controller may have neglected to make the corresponding amendment to the entry of the latter.

(5) In the case of one among two or more primary company controllers or an alternative company controller, if the controller, having received an instruction under this regulation, is not able to give effect to the instruction solely because he or it has no authority to hold entitlements for any person specified, he or it shall notify a transaction to (in the case of a primary company controller) the company or (in the case of an alternative company controller) the Operator for the entitlement or entitlements concerned to be transferred to a primary company controller which is so authorised and instruct that controller to hold the entitlement for the person specified.

Conditional instructions by way of security (England and Wales and Northern Ireland)

34.—(1) This regulation shall have effect so as to facilitate the giving of a security interest over units of a security under the law of England and Wales or Northern Ireland.

(2) Without prejudice to any other circumstances in which a conditional instruction may be issued to a controller, an account holder may, in order to give security for any obligation, issue an instruction to a controller to hold an entitlement for another person (which may be the controller) under regulation 33(1) on terms that the instruction:

- (a) is conditional upon being confirmed by the person specified in the instruction; and
- (b) is to cease to have effect if that person cancels it but is otherwise irrevocable as between the controller and the account holder.

(3) A controller shall acknowledge the receipt of such an instruction to the account holder and the person specified in the instruction, giving the date of its receipt.

(4) Where a commercial controller has received such an instruction but the instruction has not yet been confirmed or cancelled, the controller shall not issue any communication on behalf of the account holder to the company or any other person in respect of the entitlements subject to the instruction unless he or it has given 10 working days prior notice to the person specified in the instruction.

(5) A commercial controller:

- (a) may agree with an account holder that he or it will not receive instructions under this regulation; and
- (b) shall not accept an instruction under this regulation unless he or it is authorised to hold any entitlement concerned.

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

This regulation is also subject to any agreement between such a controller, an account holder of that controller giving an instruction under this regulation and any person specified in the instruction.

(6) An instruction given under paragraph (1) shall be regarded, for the purposes of any provision of these Regulations, as being an instruction under regulation 33(1), notwithstanding its conditional nature.

A person giving such an instruction shall be regarded as the account holder with respect to any entitlement concerned until the instruction has been confirmed and acted upon.