

2008 No. 719

COMPANIES

**The Companies (Reduction of Capital) (Creditor Protection)
Regulations 2008**

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|-------------------------------|------------------------|
| <i>Made</i> - - - - | <i>11th March 2008</i> |
| <i>Laid before Parliament</i> | <i>13th March 2008</i> |
| <i>Coming into force</i> - - | <i>6th April 2008</i> |

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

In exercise of the powers conferred by that section, the Secretary of State makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Companies (Reduction of Capital) (Creditor Protection) Regulations 2008.

(2) These Regulations come into force on 6th April 2008.

Amendment of the Companies Act 1985

2. In section 136(3) of the Companies Act 1985(c) (application to court for order confirming reduction of share capital: creditors entitled to object)—

(a) after “who” insert “— (a)”, and

(b) after “admissible in proof against the company” insert—

“, and

(b) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due.”.

Amendment of the Companies (Northern Ireland) Order 1986

3. In section 146(3) of the Companies (Northern Ireland) Order 1986(d) (application to court for order confirming reduction of share capital: creditors entitled to object)—

(a) after “who” insert “— (a)”, and

(a) S.I. 2007/193.
(b) 1972 c.68.
(c) 1985 c.6.
(d) S.I. 1986/1032 (N.I. 6).

(b) after “admissible in proof against the company,” insert—

“and

(b) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due,”.

Transitional provision

4. The amendments made by regulations 2 and 3 do not apply where the application to the court for an order confirming the proposed reduction of share capital was made before 6th April 2008.

11th March 2008

Gareth Thomas
Parliamentary Under Secretary of State for Trade and Consumer Affairs,
Department for Business, Enterprise and Regulatory Reform

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the amendment made to Article 32(1) of Council Directive 77/91/EEC (OJ L 26, 31.1.1977, p. 1) by Directive 2006/68/EC of the European Parliament and of the Council (OJ L 264, 25.9.2006, p. 32). The latter Directive amended the former as regards the formation of public companies and the maintenance and alteration of their capital. The Regulations also make corresponding amendments to the law as it relates to private companies.

These Regulations amend section 136 of the Companies Act 1985 and Article 146 of the Companies (Northern Ireland) Order 1986. Under section 135 of the Act and Article 145 of the Order a limited company may reduce its share capital by special resolution subject to confirmation by the court. The Act and the Order provide a procedure for identifying and producing a list of creditors entitled to object to a proposed capital reduction. Before the court may confirm a reduction it must be satisfied that the consent of the listed creditors has been obtained or their claims have been discharged or have determined or have been secured by the company. The Regulations amend the Act and the Order to exclude from the list creditors who cannot show that there is a real likelihood that the proposed capital reduction would result in the company being unable to discharge their debts or claims when they fell due.

A transposition note has been prepared which sets out how Directive 2006/68/EC is to be transposed into UK law. An impact assessment in respect of these Regulations has also been produced. Both are available from the Department for Business, Enterprise and Regulatory Reform, Corporate Law and Governance Directorate, 1 Victoria Street, London, SW1H 0ET or at <http://www.berr.gov.uk>.

STATUTORY INSTRUMENTS

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