

**EXPLANATORY MEMORANDUM TO**  
**THE COMPANIES (SHAREHOLDERS' RIGHTS) REGULATIONS 2009**

**2009 No. 1632**

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument implements Directive 2007/36/EC<sup>1</sup> on the exercise of certain rights of shareholders in listed companies (the "Directive") by amending Part 13 of the Companies Act 2006 ("the Act"). The Directive is intended to help facilitate the exercise of basic shareholders' rights and solve problems in the cross-border exercise of such rights, particularly voting rights, in respect of companies traded on regulated markets.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 The European Commission published the proposed draft directive on 5 January 2006. An Explanatory Memorandum was submitted to Parliament for scrutiny on 7 February 2006 (Explanatory Memorandum 5217/06). The House of Commons cleared the Memorandum on 7th February 2007 in their 9th Report Session 2006-7 (Item number 27177). The House of Lords cleared it via a letter to the Government dated 14th December 2006 (Progress of Scrutiny 18 December 2006).

4.2 This instrument is being made using section 2(2) of the European Communities Act 1972. Section 2(2) of the European Communities Act 1972 allows the making of regulations for the purpose of implementing any Community obligation of the United Kingdom. This instrument implements the Directive by amending Part 13 of the Act, which deals with members' resolutions and company meetings.

4.3 As the regulations make textual amendment to primary legislation they have been vetted by Parliamentary Counsel.

4.4 A transposition note is attached to this memorandum.

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

Ian Lucas, the Minister for Business and Regulatory Reform has made the following statement regarding Human Rights:

In my view the provisions of The Companies (Shareholders' Rights) Regulations 2009 are compatible with the Convention rights.

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<sup>1</sup> Directive 2007/36/EC of the European Parliament and of the Commission of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L184/17, 14.7.2007)

## 7. Policy background

- *What is being done and why*

7.1 The process of voting at company general meetings differs widely across EU Member States and is often a complex procedure; it is further complicated when shares of a company registered in one Member State are held by members in another; hence the Commission's proposal for EU action. The rationale for the directive was that existing legislation at EU level does not address sufficiently cross-border voting issues. The Prospectus Directive (2001/34/EC) focuses on the information which issuers have to disclose on admission to the market; and the Transparency Obligations Directive (2004/109/EC) deals with, amongst other matters, information which companies are required to make available in relation to company meetings; but neither deal with the shareholder voting process. The Directive lays down a framework of rules facilitating the rights of shareholders – in particular it seeks to ensure that shareholders in companies registered in another Member State may vote without difficulty at these companies' meetings. The intention is to improve shareholder rights and corporate governance in particular, and ultimately improve the conditions for cross-border investment and business competitiveness.

7.2 The UK has a large and prestigious equity market with a dispersed shareholder structure. Consequently the regime of shareholder rights is well-developed. Shareholder participation in company meetings and the conduct of those meetings in listed companies is governed by a mixture of statutory provision – chiefly the Companies Act 2006 Parts 9 and 13, companies' articles of association, the Financial Reporting Council's "Combined Code on Corporate Governance" – and case law. As a result the UK framework for shareholder rights already meets the majority of the requirements in the Directive. Our approach to implementation is to build on that existing framework by amending the Companies Act 2006 in a way which will minimise any new burdens on business.

7.3 In addition, this instrument makes minor amendments to the Companies Act 2006 consequential on implementation of the Directive.

### *Voting*

7.4 Regulations 3 and 6 are intended to clarify the ability of proxies and corporate representatives to vote at company meetings, particularly how votes are undertaken on shows of hands and implement the Directive's requirement that shareholders be able to cast votes attaching to different shares in different ways. Regulation 5 introduces the possibility for companies to offer shareholders the ability to vote by correspondence in advance without appointing a proxy (which could be electronic or by post).

### *Notice of meetings*

7.5 Regulation 9 requires general meetings of traded companies to be called at 21 days' notice unless three conditions are satisfied, in which case it can be held at 14 days' notice. The first condition is that the meeting is not an annual general meeting. The second condition is that the company offers the facility for members to appoint a proxy by means of a website and the third condition is that a special resolution has been passed reducing the period of notice to 14 days at the previous AGM. Adjourned meetings may be called at shorter notice, but where a meeting is adjourned for lack of a quorum, the meeting must be held at least 10 days after the original meeting and must not include any new business.

7.6 Regulations 10 and 11 deal with the required contents of the meeting notice and publication on a website of information in advance of a general meeting.

## *Shareholders' rights to ask questions and add agenda items*

7.7 Regulation 12 requires traded companies to answer question put by shareholders at general meetings unless one of the permitted reasons for refusing to answer applies.

7.8 Regulation 17 allows shareholders of a traded company to request that items be put on the annual general meeting agenda, and the company is required to include the item provided the threshold for shareholder requests is met.

## *Abolition of "share-blocking"*

7.9 Regulation 20 requires traded companies to determine the right to vote at a general meeting by reference to the register of members either as at the day of the meeting or 48 hours prior to the meeting. Any restriction in a company's articles preventing share transfer during that period (so-called "share-blocking") is void.

## **8. Consultation outcome**

8.1 A full public consultation on the implementation of the Directive closed on 30 January 2009<sup>2</sup>, allowing 12 weeks for responses. Fifty-three responses were received. In addition, the Department held a number of meetings with interested parties to discuss the draft regulations and our approach to implementation.

8.2 This was followed by the publication of revised draft regulations on the Department's website, allowing one week for further public comment. This further consultation closed on 29 May 2009. The Government response to the consultation was published in July 2009.

8.3 The responses covered a number of aspects of the regulations, including many technical points of drafting. The matters that were of particular concern to respondents are listed below.

- Respondents considered the operation of proxies' votes on shows of hands where a member appoints more than one proxy needed clarification.
- Respondents thought the drafting of the regulation allowing corporate representatives to vote different blocks of shares in different ways needed clarification.
- Feedback indicated the shortened deadline for traded companies to receive requests for resolutions or agenda items to be included in AGMs would create considerable practical difficulties. The regulations therefore will not set a different deadline for traded companies; the deadline will remain 6 weeks for all public companies. Also, respondents did not favour the introduction of a different expenses regime for traded companies for the circulation of shareholder resolutions/ items, and therefore the expenses regime for the circulation of these matters will be the same for all public companies.
- The grounds for a company to refuse to answer a question put by a shareholder at an AGM were considered too restrictive. As a result another ground allowing companies not to answer a question put by a shareholder at an AGM was added, namely that to answer the question would not be in the company's interests. This approach also follows more closely the Directive.

## **9. Guidance**

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<sup>2</sup> Implementation of the Directive on the Exercise of Certain Rights of Shareholders in Listed Companies: A Consultation Document. URN 08/1362

9.1 Guidance will be issued subject to further consultation with stakeholders. The key changes to Part 13 will be highlighted on the Department for Business, Innovation and Skills website.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is expected to be positive in particular for UK investors in EU listed companies.

10.2 The regulations have no impact on the public sector.

10.3 An Impact Assessment of the effect that the implementation of Directive 2006/36 will have on the costs of business, charities and voluntary bodies has been prepared and is attached to this memorandum. Copies are available from the Department for Business, Innovation and Skills, Corporate Law and Governance Directorate, 1 Victoria Street, London SW1. Copies have been placed in the libraries of both Houses of Parliament.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 This instrument will be reviewed, from 2011, as part of the Companies Act 2006 evaluation.

## **13. Contact**

13.1 David Styles at the Department for Business, Innovation and Skills (tel: 020 7215 0211 or email: david.styles@bis.gsi.gov.uk) can answer any queries regarding the instrument.

## Summary: Intervention & Options

<b>Department /Agency: Business, Innovation and Skills</b>	<b>Title: Impact Assessment of EU Directive on the Exercise of Voting Rights by Shareholders</b>	
<b>Stage:</b> Final	<b>Version:</b> 1	<b>Date:</b> July 2009
Related Publications: EU Impact Assessment February 2006 <a href="http://ec.europa.eu/internal_market/company/docs/shareholders/comm_native_sec_2006_0181_en.pdf">http://ec.europa.eu/internal_market/company/docs/shareholders/comm_native_sec_2006_0181_en.pdf</a>		

Available to view or download at:

<http://www>.

[http://ec.europa.eu/internal\\_market/company/docs/shareholders/comm\\_native\\_sec\\_2006\\_0181\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/shareholders/comm_native_sec_2006_0181_en.pdf)

**Contact for enquiries:** David Styles

**Telephone:** 020 7215 0211

What is the problem under consideration? Why is government intervention necessary?

The Commission has identified a market failure in the exercise of cross-border voting rights in EU listed companies. The process of voting at company general meetings differs widely across Member States, and is often a complex procedure. It is further complicated by how shares are held across EU borders and the role of intermediaries. This can create barriers to shareholders participating directly in influencing the companies they hold shares in. Difficulties include insufficient advance notice for meetings and lack of information about how to participate. Government intervention is necessary in order to enhance transparency and promote corporate governance

What are the policy objectives and the intended effects?

The proposal aims to enhance the rights shareholders are able to exercise in relation to company meetings. In particular, it seeks to achieve this by ensuring that shareholders owning shares in companies registered and listed in another Member State may vote without difficulty at company meetings. The intention is to improve shareholder rights and corporate governance, with the purpose of improving capital flows, lowering the cost of equity capital, and helping to make companies listed on regulated exchanges more economically efficient.

What policy options have been considered? Please justify any preferred option.

1. Do nothing to implement the Directive, continuing with the current UK regime, which already reflects most of the provisions in the Directive
2. Implement the directive building on UK company law and corporate governance principles. (2) is the preferred option. The consultation asks question about the best way to achieve this.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 2014

**Ministerial Sign-off** For consultation Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

Ian Lucas

.....Date: 2nd July 2009

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition) <b>Yrs</b>	
	£	
	<b>Average Annual Cost</b> (excluding one-off)	
£	<b>Total Cost (PV)</b>	£
<p>Other <b>key non-monetised costs</b> by 'main affected groups'</p> <p>Listed companies the are main affected group. Costs are mainly related to familiarisation and increased disclosure and otherwise believed to be minor in nature</p>		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' UK shareholders with EU cross-border shareholdings are main affected group.
	<b>One-off</b> <b>Yrs</b>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
£	<b>Total Benefit (PV)</b>	£
<p>Other <b>key non-monetised benefits</b> by 'main affected groups' Minimum harmonisation should provide consistency in EU and encourage shareholder participation. Agency costs reduced through shareholder engagement and ability of shareholders to exercise voting rights more efficiently. Ultimately the cost of capital should be lower. However, benefits at the level of the individual investor are less tangible than the costs. Estimates at the EU level on the basis of differences in voting and non-voting shares are provided in the evidence base.</p>		

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	EU			
On what date will the policy be implemented?	3 August 2009			
Which organisation(s) will enforce the policy?				
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	Yes/No			
Will implementation go beyond minimum EU requirements?	Yes/No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

**Impact on Admin Burdens Baseline** (2005 Prices)

(Increase - Decrease)

Increase of £

Decrease of £

**Net Impact** £

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Background

The Directive has its origins in the Commission's "EU Company Law and Corporate Governance Action Plan" which was published on 21 May 2003 in response to worldwide corporate collapses and contained a number of measures designed to modernise company law in the EU and improve market confidence.

Following two public consultations in 2004 and 2005 the Commission proposed a Directive on 5 January 2006. The UK consultation<sup>3</sup> on the proposed Directive was published on 26 October 2006. The Government response was published in May 2007. The directive was adopted on 11 July 2007 and published on 14 July 2007. It requires implementation by 3 August 2009.

### Scope

The proposed Directive would apply to the exercise of voting rights in companies that are registered in the UK and whose shares are traded on a regulated market. There are around 1100 companies registered in the UK whose shares are traded on the London Stock exchange SEAQ and SETS and Plus-Listed market (not including stocks from AIM). In relation to the other EU regulated markets operating in the UK, there are 77 members of EDX<sup>4</sup> and 127 members of virtue-x<sup>5</sup>. Of these, approximately 60 are UK registered companies. These companies cover a diverse range of sectors and operate in a variety of EU and non-EU competitive environments.

### Rationale – Why is Action Required

The Commission has identified a market failure in the exercise of cross-border voting rights in the EU listed companies<sup>6</sup>. Traditional economics and finance literature on the issue of corporate governance views the firm as an economic profit-maximising entity where managers maximise value for shareholders. Rational risk-neutral shareholders (principals) rely on risk-averse managers (agents) to maximise shareholder value. This separation of ownership and control can give rise to a principal-agent problem, which becomes the *raison d'être* for corporate governance. Principals need to effectively monitor and to some extent control their agents to ensure that managers are acting in the best interests of the company's owners and that the scope for moral hazard<sup>7</sup> is minimised.

Managers can increase agency costs by raising barriers to shareholder engagement and activism, which may result in the company being run on behalf of managers and not their owners. The proposed Directive aims to lower agency costs so that shareholders can engage more effectively and ensure the companies that they own are more efficient.<sup>8</sup> Better governance can also be useful in lowering agency costs and facilitate a lower cost of equity capital. Evidence suggests that companies that improve the strength of shareholders rights are expected to see a reduction in their equity cost of capital.<sup>9</sup>

<sup>3</sup> URN 06/1897 <http://www.berr.gov.uk/files/file34829.pdf>

<sup>4</sup> London Stock Exchange website (<http://www.londonstockexchange.com/NR/rdonlyres/E3059B89-B0D8-4DC6-AF27-997CE3F5209B/0/EDXLondonMembershipList20070710.pdf>), August 2007

<sup>5</sup> Virt-x website ([http://www.virt-x.com/members/member\\_list.html](http://www.virt-x.com/members/member_list.html)), August 2007

<sup>6</sup> EU Impact Assessment, section 3.1, page 6

<sup>7</sup> Moral hazard – the perverse incentive whereby agents are not held responsible for their actions which encourages them to engage in risky behaviour.

<sup>8</sup> EU Impact Assessment sections 3.2 & 3.3, pages 6 & 7

<sup>9</sup> Huang, Henry; Cheng, C.S. Agnes; and Collins, Denton, "Shareholder Rights and the Cost of Equity Capital" (February 2006). Available at SSRN: <http://ssrn.com/abstract=594505>.

The process of voting at company general meetings differs widely across Member States, and is often a complex procedure. It is further complicated by how shares are held across EU borders. Not all shareholders can participate directly in influencing the companies they hold shares in and often they rely on others to do this on their behalf, e.g. pension fund managers, proxy voting agencies etc. When intermediaries hold shares on behalf of investors, voting can involve a chain of events that encompasses companies, registrars custodian banks, investment managers, central securities depositories and proxy voting agencies. Some shareholders, or their representatives, are currently unable to exercise their rights effectively due to barriers created by this complex situation. Difficulties include, for example, insufficient advance notice for meetings and a lack of information about how to participate.

The rationale for the use of a directive is that existing legislation at EU level does not address sufficiently cross-border voting issues and “*a directive is the best suited instrument to guarantee a minimum common standards while respecting national specificities.*”<sup>10</sup> The Prospectus Directive (2001/34/EC) focuses on the information which issuers have to disclose on admission to the market; and the Transparency Obligations Directive (2004/109/EC) deals with, amongst other matters, information which companies are required to make available in relation to company meetings; but neither deal with the shareholder voting process.

### Objective

The proposal aims to enhance the rights shareholders are able to exercise in relation to company meetings. In particular, it seeks to achieve this by ensuring that shareholders owning shares in companies registered and listed in another Member State may vote without difficulty at company meetings. The evidence suggests that foreign shareholders are less likely to vote than domestic ones<sup>11</sup>. The intention is to improve shareholder rights and corporate governance, with the purpose of improving capital flows, lowering the cost of equity capital, and helping to make companies listed on a regulated exchange more economically efficient. The benefits of this proposal are likely to complement the benefits anticipated from the Cross-Border Mergers Directive and the Takeovers Directive.

### Approach to Implementation

The UK has a large and prestigious equity market with a dispersed shareholder structure. Consequently the regime of shareholder rights is well-developed. Shareholder participation in company meetings and the conduct of those meetings in listed companies is governed by a mixture of statutory provision – chiefly the Companies Act 2006 Parts 9 and 13, companies’ articles of association, the Financial Reporting Council’s “Combined Code on Corporate Governance” – and common law provisions. As a result the UK framework for shareholder rights already meets the majority of the requirements in the Directive. The approach to implementation is to build on that existing framework by amending the Companies Act 2006 in a way which will minimise any new burdens on business.

### Options

Only two possible options have been considered for achieving these objectives:

#### **OPTION 1 – Do nothing to implement the Directive, continuing with the current UK regime, which already reflects most of the provisions in the Directive**

It is not feasible to ‘do nothing further’ as the UK Government is under a legal obligation to implement this Directive. Whilst there will be no implementation costs associated with this option there will be potential costs for the UK economy. These include:

Lack of confidence in UK’s corporate governance regime;

<sup>10</sup> EU Impact Assessment] section 1.3, page 4

<sup>11</sup> EU Impact Assessment page 9 and Annex 7

Potential increased costs of capital for UK companies as overseas investors are discouraged from investing;  
 Potential increased costs for UK business as a result of less integrated EU capital markets; and  
 Risk of infraction proceedings brought against the UK Government by the Commission.

## **OPTION 2 – Implement the Directive by building on the existing UK framework**

This is the Government's preferred option given the unfeasibility of Option 1.

The costs and benefits of option 2 are considered in more detail in the section below.

### Costs and Benefits of the Preferred Option

In the UK, many of the mandatory provisions of the proposed Directive would not introduce additional costs or burdens, since many of the minimum standards imposed by the Directive are already in line with existing voting arrangements. Where additional costs are expected, we believe that the benefits will significantly outweigh them. The EU Impact Assessment referenced above has a fuller description of the likely costs of the current situation and the benefits of implementing the various provisions of the Directive.

### **Business Sectors Affected**

The proposed Directive applies only to the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on an EU regulated market. The proposal will apply to UK companies trading on the London Stock Exchange Main Market and those trading on the Plus-listed market. Based on LSE data<sup>12</sup> there are 1180 UK companies listed on the Main Market with a total capitalisation of £1,700 billion and a further 332 overseas companies with a total market capitalisation of £2,073 billion. These companies cover a wide range of business sectors and vary greatly in size, although the average and the median company is large on the basis of the Companies Act 2006 definition<sup>13</sup>:

Table 1:

<b>UK Registered companies trading on the LSE (SEAQ and SETS) – FAME 2004</b>			
	<b>By turnover (millions)</b>	<b>By assets (millions)</b>	<b>By no. of employees</b>
<b>Smallest Company</b>	£0.002	£0.013	1
<b>Largest Company</b>	£152,618	£683,573	402,375
<b>Average size</b>	£1,358	£4,568	9491
<b>Median size</b>	£170	£138	1240

In relation to the other EU regulated markets operating in the UK, there are 77 members of EDX<sup>14</sup> and 127 members of virt-x<sup>15</sup>. Of these, approximately 60 are UK registered companies.

However, the main benefits of the Directive are likely to be enjoyed by UK investors in EU listed companies (those admitted to trading on an EU regulated market), particularly in

<sup>12</sup> <http://www.londonstockexchange.com/en-gb/about/statistics/factsheets/mmfs.htm> June 2008

<sup>13</sup> Small and (medium) sized companies are defined in company law as at 1 April 2008 as those which meet two out of the three following criteria: turnover less than £6.5 million (£25.9 million), balance sheet less than £3.26 million (£12.9 million) and employees less than 50 (250).

<sup>14</sup> London Stock Exchange website (<http://www.londonstockexchange.com/NR/rdonlyres/E3059B89-B0D8-4DC6-AF27-997CE3F5209B/0/EDXLondonMembershipList20070710.pdf>), August 2007

<sup>15</sup> Virt-x website ([http://www.virt-x.com/members/member\\_list.html](http://www.virt-x.com/members/member_list.html)), August 2007

those markets where shareholder rights are likely to be strengthened most. As the EU Impact Assessment makes clear foreign ownership of listed companies in the EU is significant and growing<sup>16</sup>. The latest FESE Share Ownership survey<sup>17</sup> shows foreign ownership of EU listed companies in 2005 was 33% on a weighted-average basis, an increase of three percentage points since 2003. The level of foreign ownership varies significantly across the EU with the UK around the level of the average.

These figures do not show the extent of intra-EU shareholdings. However, IMF figures for the UK show that levels of overseas portfolio equity investment into the EU have risen sharply in recent years from around \$252 billion in 2001 to \$447 billion in 2006<sup>18</sup> which is about a third of the total UK overseas portfolio equity investments. Given the scale of the funds involved the benefits of improved shareholder rights, even if only minor at the level of the individual investor, have the potential to be significant for the UK economy as a whole, and especially in terms of the impact on the EU capital markets which in turn has the potential to benefit all UK business.

### Costs and Benefits of the Key Proposals

The Commission has identified five specific areas as essential for enhancing transparency for shareholders and thereby improving corporate governance. The costs and benefits relating to these proposals are set out in Table 2 below.

EU Proposal	Costs	Benefits
<b>Advance notice of meetings</b>	Criteria for calling Extraordinary General Meetings more onerous than under Companies Act 2006. Mainly familiarisation costs for companies and possible loss of flexibility.	More time to analyse related documents. Should hopefully increase attendance at meetings.
<b>Abolition of “share-blocking”</b>	No change to current UK position.	Increased ability of equity markets to operate efficiently as no restrictions on trading shares in advance of meetings.
<b>Electronic participation</b>	No change to current UK position where electronic voting by UK listed companies is widespread. Could be some additional costs depending on definition of access to electronic voting.	Should hopefully raise participation rates by allowing non-resident shareholders to vote at meetings.
<b>Right to ask questions/requirement to provide an answer</b>	This right already exists in UK law and we do not believe that significant costs to companies will arise from the amendments to company law we propose.	Greater opportunity for shareholders to monitor and influence managers.

<sup>16</sup> EU Impact Assessment section 4.1 pages 8 & 9.

<sup>17</sup> FESE, Share Ownership 2006

<sup>18</sup> <http://www.imf.org/external/np/sta/pi/cpis.htm>

<b>Voting by correspondence</b>	Some additional costs for companies from systems changes required to allow direct voting by correspondence. Likely to be one-off and minor in nature.	Greater opportunity for shareholders to participate in and influence votes at meetings.
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It is difficult to monetise the likely costs of these provisions but discussions with stakeholders to date suggest that these are likely to be related mainly to familiarisation with the new requirements and generally minimal in nature. The other hand the benefits of introducing the proposals are likely to be significant given the scale of assets involved but rather less tangible at the level of the individual investor. However, the EU impact assessment<sup>19</sup> does attempt to estimate the economic distortion caused by the current barriers to cross-border voting. They do this by treating foreign shareholdings as if they were non-voting shares and calculating the loss of value which this represents (using the average difference in price between voting and non-voting shares of 19%). For the whole of the EU the economic distortion is calculated at €359,257 million. Although it is clear that this is not the actual cost of the current barriers it does provide some indication of the scale of the problem.

#### Small Business Impact

The vast majority of companies coming into the scope of the Directive are large. Small firms theoretically have a relatively higher cost of equity capital. Any improvement in shareholder rights should assist in reducing the cost of equity capital.

#### Competition

The EU shareholder Rights Directive when fully implemented should improve the corporate governance of EU companies and the market for corporate control. If this has any impact on competition in the UK it is likely to be beneficial.

#### Assumptions/Unintended Consequences

Non-EU resident shareholders will be treated in the same way as EU resident shareholders. However, in line with other directives, investors who have an equivalent economic exposure to shareholders, but who do not hold shares (for example holders of Depositary Receipts) may not enjoy the same rights as shareholders covered by the Directive.

The mandatory provisions in the Directive will bring harmonisation but in some areas the Directive permits a more flexible approach. The implementation of the Directive by other Member States may therefore result in some unintended consequences for UK shareholder

The Directive is aimed at companies and is unlikely to produce any discriminatory consequences in terms of race, disability or gender.

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<sup>19</sup> EU Impact Assessment, section 4, page 16

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes/No
Small Firms Impact Test	Yes	Yes/No
Legal Aid	No	Yes/No
Sustainable Development	No	Yes/No
Carbon Assessment	No	Yes/No
Other Environment	No	Yes/No
Health Impact Assessment	No	Yes/No
Race Equality	Yes	Yes/No
Disability Equality	Yes	Yes/No
Gender Equality	Yes	Yes/No
Human Rights	No	Yes/No
Rural Proofing	No	Yes/No

## Transposition Notes

DIRECTIVE 2007/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of  
11<sup>th</sup> July 2007 on the exercise of certain rights of shareholders in listed companies

This table has been prepared by the Department for Business, Innovation and Skills. It sets out the objective of each article of the Directive, and how it is to be implemented in the United Kingdom. The Secretary of State is responsible for implementation.

The regulations implementing the Directive do not go beyond what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article of Directive 2007/36/EC	Objective of Article	Implementation
1	Subject matter and scope of the Directive. 1.3 Member state option to exempt certain types of companies	No action necessary.
2	Contains key definitions for the purposes of the Directive (“regulated market”, “shareholder” and “proxy”)	No specific action necessary.
3	Allows Member States to impose further obligations on companies or measures to facilitate the exercise of the rights in the Directive.	No action necessary.
4	Ensures the equal treatment of shareholders in the same position with regard to participation and voting rights	UK law already provides for this.

<b>Article of Directive 2007/36/EC</b>	<b>Objective of Article</b>	<b>Implementation</b>
<b>5</b>	<p>5.1 Sets minimum time periods for issuing notice of the general meeting: 21 days, or 14 days if certain conditions are met.</p> <p>5.2 Ensures shareholder access to the meeting notice</p> <p>5.3 Contents of the meeting notice</p> <p>5.4 Information that company must make available on Internet site</p>	<p>Regulation 9 implements Article 5.1 by inserting new section 307A which sets minimum time periods for meeting notice. New section 307A(8) ensures that these provisions do not apply to certain meetings in respect of takeover bids.</p> <p>UK law already meets Article 5.2 (section 308, Companies Act 2006)</p> <p>Regulation 10 implements Article 5.3 by inserting a subsection to section 311 setting out the matters that must be included in notice of a traded company meeting.</p> <p>Regulation 11 implements Article 5.4 by inserting new section 311A which sets out matters that must be published on a website.</p>
<b>6</b>	<p>6.1 Shareholder's right to put items on the agenda (6.1(a)) of the general meeting and table draft resolutions (6.1(b))</p> <p>6.2 Where right is subject to minimum stake in company, it shall not exceed 5%</p> <p>6.3 Member States must set a deadline by which shareholders may exercise the right in paragraph 1.</p> <p>6.4 Where exercise of right in 6.1(a) entails a modification of the agenda, the company shall make available a revised agenda</p>	<p>Regulation 17 implements Article 6.1 by inserting new section 338A which enable members to require matters to be included in the business of the meeting; the UK already provides for shareholders to table resolutions (section 338, Companies Act 2006)</p> <p>New section 338A(2)(a) implements Article 6.2</p> <p>Regulation 4 implements Article 6.2.</p> <p>New section 338A(5) states that a request must be received by the company not later than 6 weeks before the meeting to which it relates.</p> <p>Regulation 18 inserts new section 340A which requires traded companies to give notice of the item to be included in the agenda to each member.</p>

<b>Article of Directive 2007/36/EC</b>	<b>Objective of Article</b>	<b>Implementation</b>
7	<p>7.1 Ensures that the right to transfer shares and vote are not subject to any restrictions prior to the general meeting (abolishes share blocking).</p> <p>7.2 Requires Member States to specify record date, at which point the rights of a shareholder to participate and vote shall be determined.</p> <p>7.3 Single record date must apply to all companies, but Member State option to set different record dates for bearer shares and registered shares; Member States must ensure at least 8 days elapse between the latest permissible convocation date and record date; for adjourned meetings, Member States may require at least 6 days elapse.</p> <p>7.4 Proof of qualification of shareholder must be only what is necessary and proportionate.</p>	<p>Regulation 20 implements Article 7 by inserting new section 360B. Section 360B(1) implements Article 7.1 by deeming articles that impose certain restrictions void.</p> <p>Section 360B implements Article 7.2 by setting a record date of 48 hours.</p> <p>The UK is not setting a different date for bearer and registered shares. The UK's record date and meeting notice periods comply with the requirement that at least 8 days elapse between the two dates.</p> <p>In the UK proof of qualification of a shareholder is a matter for the company.</p>
8	<p>8.1 Member States must permit companies to offer electronic participation in meetings</p> <p>8.2 Use of electronic means must only be subject to necessary and proportionate requirements to ensure identification of shareholders and security of electronic communication.</p>	<p>Regulation 8 implements Article 8 by inserting a new section 360A. Section 360A(1) implements Article 8.1 by stating that electronic meetings by persons not present together is not precluded.</p> <p>Section 360A(2) implements Article 8.2 by ensuring that participation in electronic meetings may only be subject to such requirements that are necessary and proportionate for identification and security.</p>

Article of Directive 2007/36/EC	Objective of Article	Implementation
9	<p>9.1 Shareholders have the right to ask questions and the company shall answer.</p> <p>9.2 Right to ask questions is subject to certain measures Member States may take to ensure identification, good order of meetings, protection of confidentiality and business interests, and companies may provide one overall answer to questions having same content and answer deemed given if information is available on internet site.</p>	<p>Regulation 12 implements Article 9 by inserting new section 319A.</p> <p>Section 319A(1) implements Article 9.1 by stating that a company must cause to be answered any question put by a member.</p> <p>Section 319A(2) implements Article 9.2 by providing reasons for a company not to give an answer, including if to do so would interfere with preparation for a meeting, disclose confidential information, if answer is already on a website, or if it is undesirable in the interests of the company or good order of the meeting.</p>
10	<p>10.1 Shareholder's right to appoint a proxy to attend, vote, speak and ask questions at a general meeting.</p> <p>10.2 Member State options to limit proxy appointment to single meeting or period, or limit the number of proxies a shareholder may appoint</p> <p>10.3 Contains various Member State options to address conflicts of interest between proxy holder and shareholder.</p> <p>10.4 Proxy holder shall vote in accordance with instructions issued by the appointing shareholder.</p> <p>10.5 A proxy holder may hold a proxy from more than one shareholder without limitation and shall be enabled to cast different votes for different shareholders.</p>	<p>Regulation 3 implements Article 10.1 by setting out the voting rights of proxies in relation to votes on polls and shows of hands.</p> <p>The UK is not using the Member State option in Article 10.2</p> <p>The UK is not implementing the Member State options addressing proxy conflicts of interest in Article 10.3.</p> <p>Regulation 7 implements Article 10.4 by obligating a proxy to vote in accordance with any instructions given by the member by whom the proxy is appointed.</p> <p>Regulation 3 implements Article 10.5</p>

<b>Article of Directive 2007/36/EC</b>	<b>Objective of Article</b>	<b>Implementation</b>
<b>11</b>	<p>11.1 Permits shareholders to appoint a proxy by electronic means, and permits companies to accept notification of appointment by electronic means</p> <p>11.2 Proxy holders may be appointed and notified to the company only in writing; otherwise appointment, notification, and instructions may be subject only to formal requirements as are necessary and proportionate for identifying the shareholder and content of instructions.</p> <p>11.3 Provisions of this Article apply mutatis mutandis for revocation of appointment of proxy.</p>	<p>Regulation 13 implements Article 11. New section 333A implements Article 11.1 by requiring companies to give an electronic address or website for receipt of documents and information relating to proxies.</p> <p>New section (A1) inserted into section 327 implements Article 11.2 by stating appointment must be notified in writing and that a member is not required to provide anything other than reasonable evidence of identity of the member and proxy and the members instructions.</p> <p>New section (A1) inserted into section 330 implements Article 11.3 by requiring termination of proxy appointment to be notified to the company in writing.</p>
<b>12</b>	<p>Permits companies to offer shareholders the possibility to vote by correspondence in advance of general meeting. Voting by correspondence may be subject only to requirements as are necessary and proportionate to ensure identification of shareholders.</p>	<p>Regulation 5 implements Article 12 by inserting new section 322A which allows a company's articles to provide that votes on polls may include votes cast in advance, and that such vote must only be subject to requirements as are necessary and proportionate for identification of shareholder.</p>

Article of Directive 2007/36/EC	Objective of Article	Implementation
13	<p>13.1 Article applies where a person recognised as shareholder acts in the course of business on behalf of another person.</p> <p>13.2 Where disclosure requirements are imposed for exercise of voting rights by a shareholder referred to in 13.1, they shall not go beyond disclosing the identity of each client and number of shares voted on his behalf.</p> <p>13.3 Where law imposes requirements on authorisation of shareholder referred to in 13.1 to exercise voting rights, or on voting instructions, such requirements should be necessary and proportionate for verifying the client or voting instructions.</p> <p>13.4 A shareholder in 13.1 shall be permitted to cast votes attaching to some shares differently from votes attaching to others.</p> <p>13.5 Where law limits the number of proxies that may be appointed by a shareholder that limitation shall not prevent a shareholder referred to in 13.1 from granting a proxy to each client.</p>	<p>No action necessary to implement 13.1</p> <p>The UK does not impose disclosure requirements.</p> <p>The UK does not impose authorisation requirements.</p> <p>Regulation 3 implements Article 13.4 by inserting a substitute section 285 which allows appointed proxies to exercise different voting rights in different ways. Also, regulation 6 inserts substitute subsections (2) to (4) of section 323 which allows corporate representatives to exercise powers in respect of different shares.</p> <p>Under UK law a member may appoint proxies to exercise rights attaching to different shares, or to a different £10 or multiple of £10, of stock held.</p>

<b>Article of Directive 2007/36/EC</b>	<b>Objective of Article</b>	<b>Implementation</b>
<b>14</b>	<p>14.1 Requires companies to establish for each resolution the number of shares for which votes were cast, share capital represented by those votes, total number of votes, number in favour and against and abstentions. Sufficient to establish voting results only to extent needed for required majority (unless a shareholder requests a full account).</p> <p>14.2 Company must publish voting results on Internet site within a period of time not exceeding 15 days.</p> <p>14.3 Article without prejudice to rules Member States may adopt regarding formalities for resolution to be valid or for subsequent challenge to voting result.</p>	<p>Regulation 19 implements Article 14 by inserting new section (1A) to section 341 which lists the matters required to be published on a website regarding the voting result on a resolution.</p> <p>New section (1B) of section 341 sets a period of 15 days after the meeting.</p> <p>No action necessary.</p>
<b>15</b>	Directive to be transposed by 3 August 2009, and communicate to the Commission forthwith text of those measures transposing the Directive.	No specific action necessary. Details of the transposition measures will be communicated to the EU Commission.
<b>16</b>	Entry into force	No action necessary.
<b>17</b>	Addressees	No action necessary.