

*These notes refer to the Companies Act 2006 (c.46)  
which received Royal Assent on 8 November 2006*

# COMPANIES ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 28: Takeovers Etc**

#### **Miscellaneous and supplementary**

#### *Chapter 2: Impediments to Takeovers*

#### **Summary and background**

#### *Section 968: Effect on contractual restrictions*

1237. This section provides that agreements entered into between shareholders in the company on or after 21 April 2004 (the date on which the Takeovers Directive was adopted), and agreements entered into between a shareholder and the company before as well as on or after that date, are invalid in so far as they impose any of the restrictions set out in *subsection (2)*.
1238. Those restrictions relate both to the bid period and to the time following a takeover bid when the bidder holds 75% or more in value of all the voting shares in the company. Types of restrictions overridden are those imposing restrictions on the transfer of shares and on rights to vote at general meetings of the company to decide on action to frustrate the bid and at the first meeting to be held after the end of the offer period. For the purposes of determining when the bidder holds 75% or more in value of all the voting shares in the company, both debentures and shares which do not normally carry rights to vote at a general meeting (such as preference shares) held by the bidder are to be disregarded (see *subsection (8)*).
1239. The provisions related to the types of contractual agreements to which the override will apply (including the date at which such contracts were entered into) and the restrictions which are made invalid are designed to replicate the provisions of Article 11 of the Directive.
1240. *Section 968(6)* provides that a person who suffers loss as a result of a contractual agreement being overridden can apply to the court for compensation. It is expected that, in the first instance, such compensation will be offered by the bidder in making the takeover offer. Where, however, the compensation offered by the bidder is not acceptable to the person whose rights are being overridden, there is a right to apply to the court. The court will award compensation to the person who suffers loss on a just and equitable basis to be paid by any person (which could include the bidder or the other party to the contract which has been overridden) who would have been liable to him for committing or inducing the breach of contract which would have been committed had the restriction in question not been made invalid by this section.