

STATUTORY INSTRUMENTS

2003 No. 1116

COMPANIES

The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003

Made - - - - *14th April 2003*
Laid before Parliament *15th April 2003*
Coming into force - - *1st December 2003*

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the acquisition by companies of their own shares, and to distributions to their shareholders, in exercise of the powers conferred on her by section 2(2) of that Act and of all other powers enabling her in that behalf, hereby makes the following Regulations:

PROSPECTIVE

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003 and shall come into force on 1st December 2003.

(2) In these Regulations, “the 1985 Act” means the Companies Act 1985⁽³⁾.

Commencement Information

II Reg. 1 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 162

2.—(1) Amend section 162 of the 1985 Act (power of company to purchase own shares)⁽⁴⁾ as follows.

(2) For subsection (2) substitute—

(1) S.I.1999/654.

(2) 1972 c. 68: as amended by the European Economic Area Act 1993 (c. 51).

(3) 1985 c. 6.

(4) Section 162 was amended from a day to be appointed by section 133(4) of the Companies Act 1989 (c. 40).

Status: This version of this Instrument contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“(2) Sections 159 and 160 apply to the purchase by a company under this section of its own shares as they apply to the redemption of redeemable shares.

This is subject to subsections (2A) and (2B).

(2A) The terms and manner of a purchase under this section need not be determined by the articles as required by section 160(3).

(2B) Where a company makes a purchase of qualifying shares out of distributable profits under this section, section 162A applies to the shares purchased; and accordingly section 160(4) does not apply to those shares.”.

(3) At the end of subsection (3) insert “or shares held as treasury shares”.

(4) After subsection (3) insert the following subsection—

“(4) For the purposes of this Chapter “qualifying shares” are shares which—

- (a) are included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000⁽⁵⁾,
- (b) are traded on the market known as the Alternative Investment Market established under the rules of London Stock Exchange plc,
- (c) are officially listed in an EEA State, or
- (d) are traded on a market established in an EEA State which is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field⁽⁶⁾

and in paragraph (a) “the official list” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.”.

Commencement Information

I2 Reg. 2 in force at 1.12.2003, see [reg. 1\(1\)](#)

Insertion of sections 162A, 162B, 162C, 162D, 162E, 162F and 162G

3. After section 162 of the 1985 Act insert the following sections—

“Treasury shares

162A.—(1) Where qualifying shares are purchased by a company out of distributable profits in accordance with section 162, the company may—

- (a) hold the shares (or any of them), or
- (b) deal with any of them, at any time, in accordance with section 162D.

(2) Where shares are held under subsection (1)(a) then, for the purposes of section 352, the company must be entered in the register as the member holding those shares.

(3) In this Act, references to a company holding shares as treasury shares are references to the company holding shares which—

- (a) were (or are treated as having been) purchased by it in circumstances in which this section applies, and
- (b) have been held by the company continuously since they were so purchased.

⁽⁵⁾ 2000 c. 8.

⁽⁶⁾ OJ 141, 11 June 1993, p.27.

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Treasury shares: maximum holdings

162B.—(1) Where a company has shares of only one class, the aggregate nominal value of shares held as treasury shares must not at any time exceed 10 per cent. of the nominal value of the issued share capital of the company at that time.

(2) Where the share capital of a company is divided into shares of different classes, the aggregate nominal value of the shares of any class held as treasury shares must not at any time exceed 10 per cent. of the nominal value of the issued share capital of the shares in that class at that time.

(3) Where subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares, in accordance with section 162D, before the end of the period of 12 months beginning with the day on which that contravention occurs.

For this purpose “the excess shares” means such number of the shares, held by the company as treasury shares at the time in question, as resulted in the limit being exceeded.

Treasury shares: voting and other rights

162C.—(1) This section applies to shares which are held by a company as treasury shares (“the treasury shares”).

(2) The company must not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.

(3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including meetings under section 425).

(4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company’s assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

(5) Nothing in this section is to be taken as preventing—

- (a) an allotment of shares as fully paid bonus shares in respect of the treasury shares, or
- (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).

(6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 162A(1) applied.

Treasury shares: disposal and cancellation

162D.—(1) Where shares are held as treasury shares, a company may at any time—

- (a) sell the shares (or any of them) for cash,
- (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme, or
- (c) cancel the shares (or any of them).

(2) For the purposes of subsection (1)(a), “cash”, in relation to a sale of shares by a company, means—

- (a) cash (including foreign currency) received by the company, or
- (b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid, or

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- (c) a release of a liability of the company for a liquidated sum, or
- (d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.

(3) But if the company receives a notice under section 429 (right of offeror to buy out minority shareholders) that a person desires to acquire any of the shares, the company must not, under subsection (1), sell or transfer the shares to which the notice relates except to that person.

(4) If under subsection (1) the company cancels shares held as treasury shares, the company must diminish the amount of the issued share capital by the nominal value of the shares cancelled; but the cancellation is not to be taken as reducing the amount of the company's authorised share capital.

(5) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) without complying with sections 135 and 136 (resolution to reduce issued share capital; application to court for approval).

Treasury shares: mandatory cancellation

162E.—(1) If shares held as treasury shares cease to be qualifying shares, the company must forthwith cancel the shares in accordance with section 162D.

(2) For the purposes of subsection (1), shares are not to be regarded as ceasing to be qualifying shares by virtue only of—

- (a) the suspension of their listing in accordance with the applicable rules in the EEA State in which the shares are officially listed, or
- (b) the suspension of their trading in accordance with—
 - (i) in the case of shares traded on the market known as the Alternative Investment Market, the rules of London Stock Exchange plc, and
 - (ii) in any other case, the rules of the regulated market on which they are traded.

(3) For the purposes of this section “regulated market” means a market which is a regulated market for the purposes of Article 16 of Council Directive [93/22/EEC](#) on investment services in the securities field.

Treasury shares: proceeds of sale

162F.—(1) Where shares held as treasury shares are sold, the proceeds of sale shall be dealt with in accordance with this section.

(2) Where the proceeds of sale are equal to or less than the purchase price paid by the company for the shares, the proceeds shall be treated for the purposes of Part 8 as a realised profit of the company.

(3) Where the proceeds of sale exceed the purchase price paid by the company for the shares—

- (a) that part of the proceeds of sale that is equal to the purchase price paid shall be treated for the purposes of Part 8 as a realised profit of the company, and
- (b) a sum equal to the excess shall be transferred to the company's share premium account.

(4) The purchase price paid by the company for the shares shall be determined by the application of a weighted average price method.

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(5) Where the shares were allotted to the company as fully paid bonus shares, the purchase price paid for them shall, for the purposes of subsection (4), be treated as being nil.

Treasury shares: penalty for contravention

162G. If a company contravenes any provision of sections 162A to 162F every officer of it who is in default is liable to a fine.”.

Commencement Information

I3 Reg. 3 in force at 1.12.2003, see [reg. 1\(1\)](#)

Consequential amendments

4. The Schedule to these Regulations (which contains consequential amendments) has effect.

Commencement Information

I4 Reg. 4 in force at 1.12.2003, see [reg. 1\(1\)](#)

14th April 2003

Melanie Johnson,
Parliamentary Under Secretary of
State for Competition, Consumers and
Markets, Department of Trade and Industry

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PROSPECTIVE

SCHEDULE

Regulation 4

Amendment of section 5 of the 1985 Act

1. In section 5 of the 1985 Act (procedure for objecting to alteration of company's objects) after subsection (7) insert—

“(7A) For the purposes of subsection (2)(a), any of the company's issued share capital held as treasury shares must be disregarded.”.

Commencement Information

I5 Sch. para. 1 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 24 of the 1985 Act

2. In section 24 of the 1985 Act (minimum membership for carrying on business)(7), the existing provision becomes subsection (1) of that section, and at the end insert—

“(2) For the purposes of this section references to a member of a company do not include the company itself where it is such a member only by virtue of its holding shares as treasury shares.”.

Commencement Information

I6 Sch. para. 2 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 54 of the 1985 Act

3. In section 54 of the 1985 Act (litigated objection to resolution under section 53) after subsection (2) insert—

“(2A) For the purposes of subsection (2)(a), any of the company's issued share capital held as treasury shares must be disregarded.”.

Commencement Information

I7 Sch. para. 3 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 89 of the 1985 Act

4. In section 89 of the 1985 Act (offers to shareholders to be on pre-emptive basis) after subsection (5) insert—

“(6) For the purposes of subsections (1) and (2), where a company is holding relevant shares as treasury shares the company is not a “person who holds relevant shares”.”.

(7) Section 24 was amended by paragraph 2 of the Schedule to the Companies (Single Member Private Limited Companies) Regulations 1992 (S.I. 1992/1669).

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Commencement Information

18 Sch. para. 4 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 94 of the 1985 Act

5.—(1) Amend section 94 of the 1985 Act (definitions for sections 89–96) as follows.

(2) At the end of subsection (5)(b) insert “or, in the case of shares held by the company as treasury shares, are to be transferred in pursuance of such a scheme”.

(3) After subsection (3) insert—

“(3A) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class also includes the sale of any relevant shares in the company or (as the case may be) relevant shares of a particular class if, immediately before the sale, the shares were held by the company as treasury shares.”.

Commencement Information

19 Sch. para. 5 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 95 of the 1985 Act

6. In section 95 of the 1985 Act (disapplication of pre-emption rights) after subsection (2) insert—

“(2A) Subsections (1) and (2) apply in relation to a sale of shares which is an allotment of equity securities by virtue of section 94(3A) as if—

- (a) in subsection (1) for “Where the directors of a company are generally authorised for purposes of section 80, they” there were substituted “The directors of a company” and the words “pursuant to that authority” were omitted, and
- (b) in subsection (2), the words from “Where” to “otherwise),” and, in paragraph (a), the words “to be made pursuant to that authority” were omitted.”.

Commencement Information

110 Sch. para. 6 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 103 of the 1985 Act

7. In section 103(4) of the 1985 Act (non-cash consideration to be valued before allotment)(**8**)—

(a) in the first sentence—

(i) after “question” insert “(“the relevant company”);”, and

(ii) for “that other company” substitute “the relevant company”, and

(b) for the second sentence substitute—

“In determining whether that is the case, the following shall be disregarded—

(8) Section 103 has been amended in a manner not relevant to these Regulations.

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- (a) shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement (“the allotting company”);
- (b) shares held by or by a nominee of a company which is—
 - (i) the holding company, or a subsidiary, of the allotting company, or
 - (ii) a subsidiary of that holding company; and
- (c) shares held as treasury shares by the relevant company.”.

.....
Commencement Information

I11 Sch. para. 7 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 125 of the 1985 Act

8.—(1) Amend section 125 of the 1985 Act (variation of class rights) as follows.

(2) In subsection (2)(a) after the word “class” insert the words “(excluding any shares of that class held as treasury shares)”.

(3) In subsection (5) after the word “company” insert the words “(excluding any member holding shares as treasury shares)”.

(4) In subsection (6)(a) after the word “question” where it first appears insert the words “(excluding any shares of that class held as treasury shares)”.

.....
Commencement Information

I12 Sch. para. 8 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 127 of the 1985 Act

9. In section 127 of the 1985 Act (shareholders' right to object to variation) after subsection (2) insert—

“(2A) For the purposes of subsection (2), any of the company’s issued share capital held as treasury shares must be disregarded.”.

.....
Commencement Information

I13 Sch. para. 9 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 131 of the 1985 Act

10. In section 131 of the 1985 Act (merger relief)(9), at the end of subsection (4) insert “(excluding any shares in that company held as treasury shares)”.

.....
Commencement Information

I14 Sch. para. 10 in force at 1.12.2003, see [reg. 1\(1\)](#)

(9) Section 131 was amended by section 439(1) of, and Schedule 13 to, the Insolvency Act 1986 (c. 45) and section 145 of, and Schedule 19 to, the Companies Act 1989 (c. 40).

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Amendment of section 143 of the 1985 Act

11. In section 143 of the 1985 Act (general rule against company acquiring own shares)—

- (a) in subsection (2), after the second “and” insert “, subject to subsection (2A),” and
- (b) after that subsection insert—

“(2A) Where a company purchases qualifying shares out of distributable profits under section 162, any contravention by the company of any provision of section 162B(1) or (2) shall not render the acquisition void under subsection (2) above.”

Commencement Information

I15 Sch. para. 11 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 169 of the 1985 Act

12.—(1) Amend section 169 of the 1985 Act (disclosure by company of purchase of own shares)(**10**) as follows.

(2) After subsection (1) insert the following subsections—

“(1A) But in the case of a company which has purchased its own shares in circumstances in which section 162A applies, the requirement to deliver a return under subsection (1) shall apply only where some or all of the shares have been cancelled forthwith after the date of their delivery in accordance with section 162D(1) and in those circumstances the particulars required by that subsection to be stated with respect to the shares purchased shall apply only to such of the shares as have been so cancelled.

(1B) Where a company has purchased its own shares in circumstances in which section 162A applies, the company shall within the period of 28 days beginning with the date on which such shares are delivered to it (except where all of the shares have been cancelled forthwith after the date of their delivery in the circumstances referred to in subsection (1A)) deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class purchased (other than any shares which have been cancelled in the circumstances referred to in subsection (1A)) the number and nominal value of each of those shares which are held as treasury shares and the date on which they were delivered to the company.”

(3) In subsection (2) for “the return” substitute “any return under subsection (1) or (1B)”.

(4) In subsection (3) after “return” insert “under either subsection (1) or (1B)”.

Commencement Information

I16 Sch. para. 12 in force at 1.12.2003, see [reg. 1\(1\)](#)

Insertion of section 169A of the 1985 Act

13. After section 169 of the 1985 Act insert the following section—

“(169A) Disclosure by company of cancellation or disposal of treasury shares

(1) Subsection (2) applies in relation to any shares held by a company as treasury shares if—

(10) Section 169 was amended by sections 143(2) and 212 of, and Schedule 24 to, the Companies Act 1989.

Status: This version of this Instrument contains provisions that are prospective.

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- (a) the company is or was required to make a return under section 169(1B) in relation to the shares, and
- (b) the shares have—
 - (i) been cancelled in accordance with section 162D(1), or
 - (ii) been sold or transferred for the purposes of or pursuant to an employees' share scheme under section 162D(1).

(2) Within the period of 28 days beginning with the date on which such shares are cancelled or disposed of, the company shall deliver to the registrar of companies for registration a return in the prescribed form stating with respect to shares of each class cancelled or disposed of—

- (a) the number and nominal value of those shares, and
- (b) the date on which they were cancelled or disposed of.

(3) Particulars of shares cancelled or disposed of on different dates may be included in a single return to the registrar.

(4) If default is made in delivering to the registrar any return required by this section, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.”.

Commencement Information

I17 Sch. para. 13 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 170 of the 1985 Act

14. In section 170(1) of the 1985 Act (the capital redemption reserve) before the words “shall be transferred” insert “, or in accordance with section 162D(4) on cancellation of shares held as treasury shares,”.

Commencement Information

I18 Sch. para. 14 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 198 of the 1985 Act

15. In section 198(2) of the 1985 Act (obligations of disclosure: the cases in which it may arise and the “the relevant time”)(**11**)—

- (a) after “general meetings of the company” insert “(excluding any shares in the company held as treasury shares)”, and
- (b) in paragraph (a) after “separately” insert “(excluding any shares of each class held as treasury shares)”.

Commencement Information

I19 Sch. para. 15 in force at 1.12.2003, see [reg. 1\(1\)](#)

(11) Section 198 has been amended in a manner not relevant to these Regulations.

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Amendment of section 214 of the 1985 Act

16. In section 214 of the 1985 Act (company investigation on requisition by members) at the end of subsection (1) insert “(excluding any shares in the company held as treasury shares)”.

Commencement Information

I20 Sch. para. 16 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 346 of the 1985 Act

17. In section 346 of the 1985 Act (“connected persons”, etc)—

- (a) in subsection (4)(a) after the second “capital” insert “(excluding any shares in the company held as treasury shares)”,
- (b) at the end of subsection (4)(b) insert “(excluding any voting rights attached to any shares in the company held as treasury shares)”, and
- (c) in subsection (5)(b)—
 - (i) after “that share capital” insert “(excluding any shares in the company held as treasury shares)” and
 - (ii) after “voting power” insert “(excluding any voting rights attached to any shares in the company held as treasury shares)”.

Commencement Information

I21 Sch. para. 17 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 352 of the 1985 Act

18. In section 352 of the 1985 Act (obligation to keep and enter up register of members) after subsection (3) insert—

“(3A) Where a company purchases one or more of its own shares in circumstances in which section 162A applies—

- (a) the requirements of subsection (2) and (3) must be complied with unless the company cancels all of the shares forthwith after the purchase in accordance with section 162D(1), but
- (b) any share which is so cancelled must be disregarded for the purposes of subsection (3).”.

Commencement Information

I22 Sch. para. 18 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 368 of the 1985 Act

19. In section 368 of the 1985 Act (extraordinary general meeting on members' requisition)(12) after subsection (2) insert—

(12) Section 368 has been amended in a manner not relevant to these Regulations.

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“(2A) For the purposes of subsection (2)(a) any of the company’s paid up capital held as treasury shares must be disregarded.”.

Commencement Information

I23 Sch. para. 19 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 369 of the 1985 Act

20. In section 369 of the 1985 Act (length of notice for calling meetings)(**13**) in subsection (4) (a) after “meeting” insert “(excluding any shares in the company held as treasury shares)”.

Commencement Information

I24 Sch. para. 20 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 370 of the 1985 Act

21. In section 370 of the 1985 Act (general provisions as to meetings and votes) in subsection (3) after the first “capital” insert “(excluding any shares in the company held as treasury shares)”.

Commencement Information

I25 Sch. para. 21 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 373 of the 1985 Act

- 22.** In section 373 of the 1985 Act (right to demand a poll)(**14**)
- (a) in subsection (1)(b)(ii) after “meeting” insert “(excluding any voting rights attached to any shares in the company held as treasury shares)”, and
 - (b) at the end of section (1)(b)(iii) insert “(excluding any shares in the company conferring a right to vote at the meeting which are held as treasury shares)”.

Commencement Information

I26 Sch. para. 22 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 376 of the 1985 Act

23. In section 376 of the 1985 Act (circulation of members' resolutions) in subsection (2)(a) after “relates” insert “(excluding any voting rights attached to any shares in the company held as treasury shares)”.

Commencement Information

I27 Sch. para. 23 in force at 1.12.2003, see [reg. 1\(1\)](#)

(13) Section 369 has been amended in a manner not relevant to these Regulations.

(14) Section 373 has been amended in a manner not relevant to these Regulations.

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Amendment of section 378 of the 1985 Act

24. In section 378 of the 1985 Act (extraordinary and special resolutions)(**15**) in subsection (3) (a) after “right” insert “(excluding any shares in the company held as treasury shares)”.

Commencement Information

I28 Sch. para. 24 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 380 of the 1985 Act

25. In section 380 of the 1985 Act (registration, etc of resolutions and agreements)(**16**) after subsection (4) insert—

“(4A) For the purposes of this section, references to a member of a company do not include the company itself where it is such a member by virtue only of its holding shares as treasury shares, and accordingly, in such circumstances, the company is not, for those purposes, to be treated as a member of any class of the company’s shareholders.”

Commencement Information

I29 Sch. para. 25 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 429 of the 1985 Act

26. In section 429 of the 1985 Act (right of offeror to buy out minority shareholders)(**17**)—

- (a) in subsection (1) before “he may” insert “(excluding any shares in the company held as treasury shares)”, and
- (b) in subsection (2) before “, he may” insert “(excluding any shares in the company held as treasury shares)”.

Commencement Information

I30 Sch. para. 26 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 430A of the 1985 Act

27. In section 430A of the 1985 Act (right of minority shareholder to be bought out by offeror)(**18**)—

- (a) at the end of subsection (1)(b) insert “(excluding any shares in the company held as treasury shares)”, and
- (b) at the end of subsection (2)(b) insert “(excluding any shares in the company held as treasury shares)”.

(15) Section 378 has been amended in a manner not relevant to these Regulations.

(16) Section 380 was amended by section 116(3) of the Companies Act 1989, Schedule 11 to the Insolvency Act 1986 and paragraph 10 of Schedule 7 to the Uncertificated Securities Regulations 2001 (S.I. 2001/3755).

(17) Section 429 was substituted by section 172(1) of, and Schedule 12 to, the Financial Services Act 1986 (c. 60).

(18) Section 430A was substituted by section 172(1) of, and Schedule 12 to, the Financial Services Act 1986.

Status: This version of this Instrument contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Companies (Acquisition of Own Shares)(Treasury Shares) Regulations 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I31 Sch. para. 27 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 431 of the 1985 Act

28. In section 431 of the 1985 Act (investigation of a company on its own application or that of its members) at the end of subsection (2)(a) insert “(excluding any shares held as treasury shares)”.

Commencement Information

I32 Sch. para. 28 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of section 744A of the 1985 Act

29. In section 744A of the 1985 Act (index of defined expressions), at the appropriate place in the Table insert—

“treasury shares section 162A(3)”.

Commencement Information

I33 Sch. para. 29 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of paragraph 38, Schedule 4 to the 1985 Act

30. In Schedule 4 to the 1985 Act (form and content of company accounts)(**19**)—

(a) in paragraph 38(1) omit “and” at the end of sub-paragraph (a), and

(b) at the end of sub-paragraph (b) insert—

“; and

(c) where shares are held as treasury shares, the number and aggregate nominal value of the treasury shares and, where shares of more than one class have been allotted, the number and aggregate nominal value of the shares of each class held as treasury shares.”.

Commencement Information

I34 Sch. para. 30 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of paragraph 10, Schedule 4A to the 1985 Act

31. In Schedule 4A to the 1985 Act (form and content of group accounts)(**20**) in paragraph 10(1)(a) after “acquired” insert “(excluding any shares in the undertaking held as treasury shares)”.

(19) Schedule 4 has been variously amended in a manner not relevant to these Regulations.

(20) Schedule 4A was inserted by section 5(2) of, and Schedule 2 to, the Companies Act 1989 and subsequently amended in a manner not relevant to these Regulations.

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Commencement Information

I35 Sch. para. 31 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of paragraphs 10 and 12, Schedule 15B to the 1985 Act

32. In Schedule 15B to the 1985 Act (provisions subject to which sections 425–427 have effect in their application to mergers and divisions of public companies)**(21)**—

- (a) in paragraph 10(2)(c) after “general meetings of the company” insert “(excluding any shares in the company held as treasury shares)”, and
- (b) in paragraph 12(5)(c) after “general meetings of the company” insert “(excluding any shares in the company held as treasury shares)”.

Commencement Information

I36 Sch. para. 32 in force at 1.12.2003, see [reg. 1\(1\)](#)

Amendment of Schedule 24 to the 1985 Act

33. In Schedule 24 to the 1985 Act (punishment of offences under the 1985 Act)**(22)** at the appropriate place in the Table insert—

“162G	Contravention of any provision of sections 162A–162F (dealings by company in treasury shares, etc)	1. 2.	On indictment Summary	A fine The statutory maximum”	
“169A(4)	Default by company’s officer in delivering to registrar the return required by section 169A (disclosure by company of cancellation or disposal of treasury shares)	1. 2.	On indictment Summary	A fine The statutory maximum	One-tenth of the statutory maximum.”.

Commencement Information

I37 Sch. para. 33 in force at 1.12.2003, see [reg. 1\(1\)](#)

(21) Schedule 15B has been amended in a manner not relevant to these Regulations.

(22) Schedule 24 has been variously amended in a manner not relevant to these Regulations.

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Repeal of section 133(4) of the Companies Act 1989

34. Section 133(4) of the Companies Act 1989(23), which substituted a new section 162(2) of the 1985 Act as from a day to be appointed, is repealed.

Commencement Information

I38 Sch. para. 34 in force at 1.12.2003, see [reg. 1\(1\)](#)

PROSPECTIVE

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further implement the Council Directive [77/91/EEC](#) (OJNo. L26, 31.1.77, p. 1) as amended by [92/101/EEC](#) (OJ No. L347, 28.11.92, p.64) on co-ordination of safeguards which, for the protection of members and others, are required by member states of companies in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent. The Regulations amend the Companies Act 1985 (c. 6) (“the 1985 Act”) to permit certain companies to hold shares in treasury following a purchase of own shares as an alternative to cancelling such shares on purchase.

2. Regulation 2 defines “qualifying shares” which are the only shares that may be held as treasury shares.

3. Regulation 3 inserts new sections 162A, 162B, 162C, 162D, 162E, 162F and 162G in the 1985 Act which set out the principal provisions relating to treasury shares. Section 162A provides that where qualifying shares are purchased out of distributable profits they may be held in treasury; and that the holding of treasury shares by nominees is not permitted. Section 162B provides that the maximum holding of treasury shares is 10% of the nominal value of any class of share. If that limit is exceeded, the company must dispose of or cancel the excess shares within 12 months. Section 162C provides that the rights attached to treasury shares, including voting rights and rights to receive dividends, are suspended and that the purported exercise of such rights is void. Section 162D provides that treasury shares may only be sold for cash; or transferred for the purposes of, or pursuant to, an employees' share scheme; or cancelled. Section 162E provides that if a company's treasury shares cease to be qualifying shares they must be cancelled forthwith. Section 162F sets out the rules that apply in respect of the proceeds of a sale of treasury shares. Section 162G provides that if a company contravenes any provision of sections 162A to 162F every officer of it who is in default is liable to a fine.

4. Regulation 4 provides that the Schedule to the Regulations has effect. The Schedule sets out consequential amendments to the 1985 Act. Paragraphs 4, 5 and 6 amend sections 89, 94 and 95 respectively and provide that the pre-emption rights that apply to the allotment of new shares also apply to the sale of treasury shares but may also be similarly disapplied with the agreement of

(23) 1989 c. 40.

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shareholders. Paragraphs 12 and 13 amend section 169 and insert new section 169A respectively and set out the rules relating to the disclosure to the Registrar of Companies of purchases of treasury shares and their subsequent sale, transfer or cancellation.

5. A Regulatory Impact Assessment of these Regulations is available from the Department of Trade and Industry, Company Law and Investigations Directorate, Room 507, 1 Victoria Street, London SW1H 0ET. A copy has also been placed in the libraries of both Houses of Parliament. Transposition Notes setting out how these Regulations further implement Council Directive [77/91/EEC](#) have been placed in the libraries of both Houses of Parliament and are also available from the above address.

Status:

This version of this Instrument contains provisions that are prospective.

Changes to legislation:

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Changes and effects yet to be applied to :

- Sch. para. 1 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 2 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 3 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 4 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 5 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 6 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 7 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 8 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 9 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 10 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 11 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 12 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 13 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 14 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 15 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 16 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 17 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 18 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 19 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 20 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 21 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 22 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 23 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 24 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 25 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 26 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 27 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 28 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
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- Sch. para. 33 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- Sch. para. 34 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- reg. 1 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- reg. 2 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- reg. 3 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)
- reg. 4 coming into force by [S.I. 2003/1116 reg. 1\(1\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Schedule para 12 rev in pt by [S.I. 2003/3031 reg 3\(1\)](#)