
EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (the “Act”) makes provision for a new type of company to be known as a community interest company. The Act confers on the Secretary of State powers to make regulations in respect of various aspects of the conduct of community interest companies' affairs and their supervision by the Regulator of Community Interest Companies (the “Regulator”).

Part 1 of the Regulations (regulations 1 and 2) states that the Regulations shall come into force on 1 July 2005 and makes provision for the interpretation of certain terms used in the Regulations.

Under the Act, a company which is to become, or be formed as, a community interest company must satisfy the “community interest test” and must not be an “excluded company”. A company satisfies the community interest test if a reasonable person might consider that its activities are being carried on for the benefit of the community, and “community” for these purposes includes a section of the community. In this context, Part 2 of the Regulations (regulations 3 to 6) provides:

that certain activities are prescribed as not being activities which a reasonable person might consider are activities carried on for the benefit of the community (regulations 3 and 4);

what may constitute a section of the community (regulation 5); and

that certain companies are excluded companies (regulation 6).

Part 3 of the Regulations (regulations 7 to 10) specifies (largely by reference to Schedules 1 to 3: see below) certain provisions which must, and certain provisions which must not, be included in the memorandum and articles of a community interest company.

Part 4 of the Regulations (regulations 11 and 12) specifies documents which must be sent to the registrar of companies on an application to form as, or become, a community interest company.

Part 5 of the Regulations (regulations 13 to 16) makes provision about the procedures which must be followed if the statement of objects in a community interest company's memorandum is to be altered.

The Act provides that community interest companies may only distribute assets to their members if regulations permit them to do so, and that regulations may impose limits on the payment of interest on debentures issued by, and debts of, community interest companies. Part 6 of the Regulations (regulations 17 to 25) sets out:

the limits to which community interest companies are subject when they declare dividends, or pay interest on debts or debentures at a “performance-related rate”, and how such limits may subsequently be changed by the Regulator with the Secretary of State's approval (regulations 17 to 22); and

the conditions on which assets may be distributed to members and others on the winding up of a community interest company, the redemption or purchase by a community interest company of its own shares, or a reduction in a community interest company's share capital (regulations 23 to 25).

The Act obliges the directors of a community interest company to prepare a “community interest company report” in respect of each financial year. Part 7 of the Regulations (regulations 26 to 29) prescribes the information which must be contained in community interest company reports and provides that certain provisions of the Companies Act 1985 relating to the directors' report which directors of companies are obliged to prepare under that Act shall also apply to the community interest company report.

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

Among the supervisory powers the Regulator may exercise in certain circumstances under the Act is the power to appoint a manager in respect of the property and affairs of a community interest company. Part 8 of the Regulations (regulations 30 to 33) makes provision for various aspects of the appointment of such managers, including their remuneration and removal from office.

Part 9 of the Regulations (regulations 34 and 35) makes provision in respect of the handling of various statutory documents relating to community interest companies by the registrar of companies.

Part 10 of the Regulations (regulation 36) provides for community interest companies to pay fees in respect of specified matters.

The Act provides that certain decisions taken and orders made by the Regulator may be the subject of appeals to the Appeal Officer for Community Interest Companies (the “Appeal Officer”). Part 11 of the Regulations (regulations 37 to 42) outlines the procedures to be followed when an appeal is brought before Appeal Officer.

Schedule 1 sets out provisions which must be included in the memorandum or articles of a community interest company which is a company limited by guarantee without a share capital.

Schedule 2 sets out provisions which must be included in the memorandum or articles of a community interest company which is either a company limited by guarantee with a share capital or a company limited by shares, if it is not to be permitted to distribute assets to any of its members (except where assets are transferred for full consideration or to the extent that any of its members are “asset-locked bodies”).

Schedule 3 sets out provisions which must be included in the memorandum or articles of a community interest company which is a company limited by shares or a company limited by guarantee with a share capital, if it is to be permitted to distribute assets to its members (whether or not they are “asset-locked bodies”), for example by declaring a dividend on some or all of its shares.

Schedule 4 sets out the method for calculating interest on debts or debentures on which a “performance-related rate” of interest is to be paid.

Schedule 5 sets out the fees payable under regulation 36.

The effects that this instrument will have on the costs of business were taken into account in preparing the regulatory impact assessment on the Act. Copies of the regulatory impact assessments, and of a more detailed guidance note on these Regulations prepared by the Department of Trade and Industry, are available from the Department of Trade and Industry’s Response Centre, 1 Victoria Street, London SW1H 0ET (e-mail dti.enquiries@dti.gsi.gov.uk, telephone 020 7215 5000) or from its website (). Copies have also been placed in the libraries of both Houses of Parliament.