

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 22: Information about Interests in Company's Shares

Background

1107. The provisions of this Part concern a public company's right to investigate who has an interest in its shares. They replace equivalent provisions in Part 6 of the 1985 Act. These are purely domestic provisions, and are not required by European Community Law.
1108. The automatic disclosure obligations currently contained in sections 198 to 211 of Part 6 of the 1985 Act will be replaced by regulations under the Financial Services and Markets Act 2000, as amended by Part 43 of this Act, in implementation of the Transparency Obligations Directive. In the regulations, a different concept of "interest in voting rights" will be adopted in order to implement the Transparency Obligations Directive.
1109. This Part re-enacts, with certain modifications, the disclosure obligations pursuant to a notice issued by the company contained in sections 212 to 219 of the 1985 Act. There is no change to the definition of "interest in shares" for this purpose.
1110. The main changes to section 212 of the 1985 Act and related provisions are:
- making clear that notices are not required to be in hard copy, and therefore can be given in electronic form (section 793 read in conjunction with the provisions in Part 37 on the sending or supplying of documents or information);
 - providing for how information is to be entered on the register of interests disclosed when the name of the present holder of the shares is not known or there is no present holder (section 808);
 - removing the requirement on the company to verify third party information supplied in response to a section 793 notice before putting it on the register (section 817);
 - requiring a company to refuse a request to inspect the register if it is not satisfied that the request is made for a proper purpose (section 812);
 - removing the requirement for a company to keep information on the register in relation to entries made more than six years previously (section 816).

Section 791: Companies to which this Part applies

1111. This section provides that this Part only applies to public companies (as section 212 of the 1985 Act provides currently).

Section 792: Shares to which this Part applies

1112. This section re-enacts in part the definition in section 198(2) of the 1985 Act of the type of shares concerning which a section 793 notice may be issued, namely shares

carrying rights to vote in all circumstances at general meetings. However, shares held by a company “in treasury” following a purchase of its own shares (as an alternative to cancelling such shares on purchase) are now included in the definition.

Section 793: Notice by company requiring information about interests in its shares

1113. This section re-enacts section 212(1) to (4) of the 1985 Act. It allows a public company to issue a notice requiring a person it knows, or has reasonable cause to believe, has an interest in its shares (or to have had an interest in the previous three years) to confirm or deny the fact, and, if the former, to disclose certain information about the interest, including information about any other person with an interest in the shares.
1114. *Subsections (3) and (4)* enable the company to require details to be given of a person’s past or present interests and to provide details of any other interest subsisting in the shares of which he is aware. This provision allows the company to pursue information through a chain of nominees by requiring each in the chain to disclose the person for whom they are acting. Under *subsection (6)*, where the addressee’s interest is a past one, a company can ask for information concerning any person by whom the interest was acquired immediately subsequent to their interest. Particulars may also be required of any share acquisition agreements, or any agreement or arrangement as to how the rights attaching to those shares should be exercised (sections 824 and 825).
1115. This section serves a different purpose to the automatic disclosure obligations currently contained in sections 198 to 211 of Part 6 of the 1985 Act. It enables companies to discover the identity of those with voting rights (direct or indirect) that fall below the thresholds for automatic disclosure, and it also enables companies (and members of the company) to ascertain the underlying beneficial owners of shares.
1116. The notice is not required to be in hard copy (see the general provisions on sending or supplying documents or information in Part 37 of the Bill). Notices, and responses thereto, may be given in electronic form. A response must be given in a reasonable time. What is reasonable has not been defined so as to allow flexibility according to the circumstances, but if the time given is not reasonable, the company will not have served a valid notice.

Sections 794 and 795: Notice requiring information: order imposing restrictions on shares and offences

1117. These sections re-enact section 216(1) to (4) of the 1985 Act. They specify the penalties for failure to provide information within the specified time when served with a notice under section 793. There are criminal penalties (although a person does not commit an offence if he can show that the requirement to give information was frivolous or vexatious).
1118. Additionally, application may be made to the court for a direction that the shares in question are to be subject to the restrictions specified in section 797.

Section 796: Notice requiring information: persons exempted from obligation to comply

1119. This section re-enacts section 216(5) of the 1985 Act. It provides that the Secretary of State may exempt a person from complying with a notice. The Secretary of State must consult the Governor of the Bank of England, and must be satisfied that there are special reasons for exempting the person (taking account of any undertaking given).

Sections 797 to 802: Orders imposing restrictions on shares

1120. These sections restate Part 15 of the 1985 Act without substantive change in so far as its provisions apply in relation to Part 22 of this Act. They set out the effect of a court order made under section 794 imposing restrictions on shares, and the penalties for attempted

evasion of the restrictions. They also make provision for the relaxation or removal of restrictions, or for an order for the sale of shares.

Section 803: Power of members to require company to act

1121. This section re-enacts section 214(1) and (2) of the 1985 Act. It requires a company to exercise its powers under section 793 on the request of members holding at least 10% of such of the paid up capital of the company as carries the right to vote at general meetings (other than voting rights attached to shares held in treasury). This provision, which has rarely been used under the 1985 Act, recognises that members of a company may have a legitimate reason for wanting the company to exercise its statutory powers to demand information even if the management does not want to. For example, the members might want to act where they suspect that the directors are involved in building a holding from behind the shelter of nominees.
1122. Provision is made as to the form and the procedure in relation to requests. In contrast to section 214, the 10% threshold may be met by a series of requests from members that the company act, rather than one collective request. Those making a request must not only specify the manner in which they require the powers to be exercised, but must also give reasonable grounds for requiring the company to exercise the powers in the manner specified (*subsection (3)(b)(ii) and (iii)*).

Section 804: Duty of company to comply with requirement

1123. This section re-enacts section 214(4) and (5) of the 1985 Act. It specifies the criminal penalties arising if the company fails to act as required. In contrast to section 214, every officer in default is liable to a fine, but the company itself is not.

Section 805: Report to members on outcome of investigation

1124. This section re-enacts section 215 of the 1985 Act. It specifies that on the conclusion of an investigation required by members it is the duty of the company to prepare a report of the information received. The report must be available within a reasonable period (not exceeding 15 days) after the conclusion of the investigation. Where the company's investigation exceeds three months, it must make interim reports available at three monthly intervals. Those making the request must be notified of reports being available. In contrast to section 215, the report may be kept at the company's registered office or at a place specified in regulations made under section 1136.

Section 806: Report to members: offences

1125. This section re-enacts section 215(8) of the 1985 Act. It specifies the criminal penalties arising if the company fails to report as required on the outcome of the investigation or to keep the report under section 805. Unlike section 215, every officer in default is liable to a fine for a failure to report, but the company itself is not.

Section 807: Right to inspect and request copy of reports

1126. This section re-enacts provisions in section 219 of the 1985 Act. It requires the company to allow reports to members to be inspected by anyone without charge. Any person can request a copy of a report, on payment of the prescribed fee. *Subsections (3) to (5)* specify the criminal penalties arising if the company fails to disclose a report as required and make provision for the courts to compel disclosure.

Section 808: Register of interests disclosed

1127. The register required to be kept by section 211 of the 1985 Act covers all interests notified, whether under the automatic disclosure rules or in response to a notice served under section 212 of that Act (company investigations). The latter are kept as a separate part of the register of interests in shares. In future it will be for regulations made under

the Financial Services and Markets Act 2000 (as amended by Part 43 of this Act) to make provision as to how interests notified under the automatic disclosure rules will be made public.

1128. This section provides that if, as a result of a section 793 investigation, the company receives information relating to interests held by any person in relevant shares, it must within three days enter in a register of interests disclosed:
- the fact that the requirement (to disclose information under the notice) was imposed and the date on which it was imposed; and
 - the information received in response to the notice under section 793.
1129. The section provides that the information must be entered either against the name of the present holder of the shares in question (as under the 1985 Act), or if the present holder is not known or there is no present holder, then against the name of the person holding the interest. *Subsections (5) and (6)* provide for criminal penalties for any default in complying with this section. *Subsection (7)* makes clear that information that a company receives under this Part does not mean that the company needs to be concerned with the existence of any trust over the shares.

Sections 809 and 810: Register to be kept available for inspection; and associated index

1130. These sections re-enact section 211(6) and (8) (as applied by section 213(3)) of the 1985 Act. Section 809 provides that the register of interests disclosed must be kept available for inspection at the company's registered office or at a place specified in regulations made under section 1136. The company must advise the registrar where the register is kept (unless it has always been kept at the registered office). *Subsections (4) and (5)* provide for criminal penalties for any default in complying with this section.
1131. **Section 810** provides that the register should have an index unless it is in a form that itself constitutes an index (for example a searchable database).

Section 811: Right to inspect and require copy of entries

1132. This section re-enacts section 219 of the 1985 Act. It provides that the register and index must be open to inspection by any person without charge. For a prescribed fee, any person is entitled to a copy of any entry on the register. A person seeking access to the register under this section must provide the information specified in *subsection (4)*, including his name and address and the purpose for which the information is to be used.

Section 812: Court supervision of purpose for which rights may be exercised

1133. This section provides that the company must only allow the inspection of the register or provide the copy requested if satisfied that it is for a proper purpose. If it refuses, the person concerned may apply to the court for it to allow the inspection or require the copy to be provided. If an application to the court is made, the person must notify the company, and the company must use its best endeavours to notify any persons whose details might be disclosed.

Section 813 Register of interests disclosed: refusal of inspection or default in providing copy

1134. This section provides for court enforcement and criminal penalties for any default in complying with section 811.

Section 814 Register of interests disclosed: offences in connection with request for or disclosure of information

1135. This section provides for criminal penalties for misleading, false or deceptive statements given when making a request under section 811. It also makes it a criminal offence for the person who receives information under section 811 to disclose it to another person, if he knows or has reason to suspect that it may be used for an improper purpose.

Section 815: Entries not to be removed from register

1136. This section re-enacts section 218 of the 1985 Act. It provides that entries can only be removed from the register in accordance with sections 816 and 817, and if wrongly deleted must be restored as soon as reasonably practicable. *Subsections (3) and (4)* provide for criminal penalties for any default in complying with this section.

Section 816: Removal of entries from register: old entries

1137. Section 217(1) of the 1985 Act provides that a company may remove an entry against a person's name from the register of interests in shares if more than six years have elapsed since the date of the entry being made, and either:
- the entry recorded the fact that the person in question had ceased to have an interest notifiable under Part 6 in the company's relevant share capital (in which case the person's name may also be removed from the register); or
 - the entry has been superseded by a later entry against the same person's name.
1138. By contrast, this section simply provides that a company is not required to keep information on the register if more than six years have elapsed since the entry was made.

Section 817: Removal of entries from register: incorrect entry relating to third party

1139. This section re-enacts in part section 217 of the 1985 Act but does not include the requirement for the company to verify information relating to third parties supplied in response to a section 793 notice. However, the third party retains the right to apply to have his name removed from the register if the information is incorrect. *Subsection (4)* provides for the courts to enforce removal of incorrect information.

Section 818: Adjustment of entry relating to share acquisition agreement

1140. This section re-enacts section 217(4) and (5) of the 1985 Act. It provides that a person identified in the register as being party to a section 824 share acquisition agreement (this may include a concert party agreement) may when he ceases to be party to the agreement, request that the register should be amended to record that information. Such entries may appear in several places on the register, as each member of the concert party is required in their individual notification to identify the other members of the concert party. If the company refuses an application, the court may order the company to comply if it thinks fit.

Section 819: Duty of company ceasing to be public company

1141. This section re-enacts provisions in section 211(7) and (10) (as applied by section 213(3)) of the 1985 Act. It provides that a company ceasing to be a public company must continue to keep any register it has kept under section 808 and any associated index for six years after it ceases to be a public company.

Section 820: Interest in shares: general

1142. This section re-enacts the definition of "interest in shares" in section 208 (as applied by section 212(5)) of the 1985 Act for the purposes of Part 22 of this Act. An "interest

in shares” is widely defined as an interest of any kind whatsoever in the shares, and includes beneficial ownership as well as direct ownership. The courts have described this wide definition as being designed “to counter the limitless ingenuity of persons who prefer to conceal their interests behind trusts and corporate entities” (*re TR Technology Investment Trust plc* [1988] BCLC 256 at 261).

Section 821: Interest in shares: right to subscribe for shares

1143. This section re-enacts section 212(6) of the 1985 Act. It provides that a notice under section 793 applies in relation to rights to subscribe for shares.

Sections 822 and 823: Interest in shares: family and corporate interests

1144. These sections re-enact section 203 (as applied by section 212(5)) of the 1985 Act. They provides for certain family interests to be attributed to persons for the purpose of disclosure, as well as certain interests held indirectly through a corporate body.

Sections 824: Interest in shares: agreement to acquire interests in a particular company

1145. This section re-enacts section 204 (as applied by section 212(5)) of the 1985 Act concerning the obligation to give details of certain share acquisition arrangements in response to a notice under section 793. It covers any agreement or arrangement, whether or not legally binding, which involves undertakings, expectations or understandings that interests in shares will be acquired and that they will be subject to relevant restrictions while the agreement subsists. This may include groups of persons acting in concert to prepare the way for a takeover offer for the company or to support a pending takeover offer.

Section 825: Extent of obligation in case of share acquisition agreement

1146. This section re-enacts section 205 (as applied by section 212(5)) of the 1985 Act. It attributes interests in shares held by a party to a section 824 agreement to the other parties to the agreement.

Section 826: Information protected from wider disclosure

1147. This section re-enacts provisions in section 211(9) (as applied by section 213(3)) and 215(4) of the 1985 Act. Under section 409 the Secretary of State may make regulations exempting a company from the need to disclose information relating to related undertakings in notes to its accounts in certain circumstances. The Secretary of State must agree that the information need not be disclosed. Where advantage is taken of this exemption, the fact must be stated in the company’s annual accounts. This section provides that this same information must not be included in a section 805 report, (though its omission must be noted in the report), and must not be available for inspection under section 811.

Section 827: Reckoning of periods for fulfilling obligations

1148. This provision re-enacts the provision of section 220(2) of the 1985 Act concerning the calculation of periods in the Part expressed as a number of working days (as defined in section 1173). In contrast to section 220(2), the definition of “working days” excludes bank holidays only in the part of the UK where the company is registered.

Section 828: Power to make further provision by regulations

1149. This section re-enacts section 210A of the 1985 Act. It confers power on the Secretary of State to make regulations to amend the definition of shares to which this Part applies (*subsection (1)(a)* re-enacting section 210A(1)(a)). Power is also conferred to amend the provisions in section 793 as to notice by a company requiring information

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

about interests in its shares, (*subsection (1)(b)* re-enacting section 210A(1)(e)), and the provisions as to what is to be taken to be an interest in shares, (*subsection (1)(c)* re-enacting section 210A(1)(d)).