
STATUTORY INSTRUMENTS

1992 No. 225

The Uncertificated Securities Regulations 1992

PART XV

MISCELLANEOUS AND GENERAL PROVISIONS

Fees

106.—(1) Subject to the provisions of this regulation a person may require, for the performance of any functions of that person under these Regulations, the payment of a fee from the person for whom, or in respect of whom, the functions are performed.

In particular (without prejudice to the generality of the foregoing):

- (a) the Secretary of State may charge a fee to the Operator in respect of his approval for the commencement of operation of the system under regulation 5 or the performance of his supervisory functions under these Regulations;
- (b) the Operator may charge a fee:
 - (i) to a company in respect of the admission of a security of the company into the system and the operation of the Operator's part thereof with respect to the security;
 - (ii) to an applicant for participation in the system; and
 - (iii) to a participant in connection with his or its continued participation and supervision;
- (c) a commercial controller may charge a fee where he or it provides his or its functions other than by an agreement for the purposes of regulation 13(1) (paragraph (6)(b) being applicable to such functions performed by such agreement).

(2) A company or company controller may not charge any fee under paragraph (1) (the appointment of a company controller by a company being an appointment to which paragraph (6)(b) applies), save (in the case of a company controller) in respect of the administrative costs of dealing with an instruction received under regulation 10(6) or 34.

(3) The fees chargeable by a person under this regulation shall not exceed an amount which appears to him or it to represent a reasonable estimate of the costs incurred by him or it in performing his or its functions under these Regulations.

(4) For the purposes of determining the costs incurred by a person in performing a function for the purposes of paragraph (3), such costs shall include (in addition to any other matter to be taken into account in determining the costs concerned) the proportion of the following matters fairly attributable to the performance of the function:

- (a) expenditure on staff, equipment, premises, facilities, research and development connected (directly or indirectly) with the performance of that function;
- (b) provisions for bad debts or contingent liabilities;
- (c) the allocation, over a period of years, of any initial expenditure incurred wholly and exclusively in order to perform the function;

- (d) any notional interest incurred on any capital initially expended on, or otherwise expended in connection with, the performance of the function or duty, as well as actual interest payable on any sums borrowed which have been so expended; and
- (e) any other matter which, in accordance with generally accepted accounting practice, may be properly taken account of in ascertaining the costs properly attributable to the performance of the function.

For the purpose of sub-paragraph (d):

- (i) “notional interest” means any interest that that person would reasonably have been expected to be liable to pay had the sums expended been borrowed at arms length; and
- (ii) “actual interest” payable means the actual interest paid on such sums borrowed, provided that, where any sums concerned have not been borrowed in a transaction at arms length, no account shall be taken of any interest payable which would not have been payable had the transaction been at arms length.

(5) Any fee received by the Secretary of State under this regulation shall be paid into the consolidated fund.

(6) Nothing in this regulation:

- (a) shall preclude a person from charging such sums as the person sees fit for any services provided by him or it otherwise than in pursuance of an obligation imposed on him or it by these Regulations;
- (b) (without prejudice to (a)) shall preclude a person (other than the Operator) who has voluntarily consented to being appointed or authorised by another person to perform any function under these Regulations (whether on behalf of that other person or on behalf of others) from charging that other person any sums that other person has contracted to pay as consideration for that consent or its continuance; or
- (c) shall preclude a company charging any fee which it may charge by virtue of any enactment in connection with the inspection or provision of copies of a register applied by these Regulations.

Financial provision by a company to company controllers

107. It shall be lawful (if it would not otherwise be) for a company or a subsidiary company of it to pay a company controller appointed by it the amount chargeable by the controller as consideration for consenting to the appointment or the continuance of that consent.

Competition scrutiny

108.—(1) It shall be the duty of the Director General of Fair Trading to keep under review:

- (a) the performance by the Operator of its functions under these Regulations and any fees payable for the performance of any such functions; and
- (b) the system,

and if he is of the opinion that the performance by the Operator of its functions, any fee charged or the system, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, he shall report his opinion to the Secretary of State, stating what in his opinion that effect is or is likely to be.

(2) For the purpose of investigating any matter with a view to its consideration under paragraph (1) the Director General of Fair Trading may by a notice in writing require the Operator, and any person who appears to be in a position to influence or control the activities of the Operator, to furnish to him such information as he may require, in such form, and at such times and on such occasions, as he may specify.

(3) Without prejudice to paragraph (2), it is the duty of the Operator to notify the Secretary of State and the Director General of Fair Trading in writing as soon as practicable after the commencement of operation of the system of the fees to be charged by it for the performance of its functions under these Regulations and thereafter to notify the Secretary of State and the Director General of any change in any fee as soon as practicable after the revised fee becomes effective.

(4) The Director General of Fair Trading may, if he thinks fit, publish any report made by him under this regulation but shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the Operator) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

Competition directions

109.—(1) If it appears to the Secretary of State, after receiving and considering a report under regulation 108, that any such matters as are mentioned regulation 110(1) have or are intended or likely to have to any significant extent the effect of restricting, distorting or preventing competition, and that that effect is greater than is reasonably justifiable having regard to the purposes of these Regulations, he may direct the Operator to take such steps as he may specify for securing that those matters do not have that effect.

(2) It shall be the duty of the Operator to comply with any direction given under this regulation.

(3) It shall be unlawful for the Operator to charge any fee under regulation 106 which is in excess of any figure specified in any direction applicable to it that may be issued under this regulation.

Investigations

110. Sections 105 and 106 of the 1986 Act shall apply with appropriate modifications in relation to participants as it applies in relation to persons carrying on investment business.

Indemnity rules

111. Section 53 (other than subsection (2)) of the 1986 Act shall apply with the substitution of a reference to a participant in connection with the performance of his functions under these Regulations for the reference to an authorised person in connection with his investment business.

Power to make rules

112.—(1) The Secretary of State may make rules for the regulation of:

- (a) the procedures for recording and transferring title to securities set out in these Regulations; and
- (b) the persons responsible for or involved in their operation.

(2) In particular the Secretary of State may make rules with respect to the following matters:

- (a) as to the steps to be taken by a company and participants upon, or prior to, the conversion of a certificated security into, or issue of units of a security in, uncertificated form or the conversion of an uncertificated security into certificated form;
- (b) as to the form and manner in which any instruction (including a proper instruction to register), notification, election, consent, confirmation or other message (together referred to in this paragraph as an “instruction”) is to be given or treated as given for the purposes of any provision of these Regulations and the manner (if any) in which an instruction is to be authenticated;
- (c) as to the form and manner, or circumstances, in which any instruction may be cancelled, amended or withdrawn or treated as cancelled, amended or with-drawn;

- (d) as to the content of an instruction and whether any and if so what other messages to, or existing information already known or likely to be known to, the recipient are to be treated as relevant to or associated with an instruction so as to form part of the instruction in order that any information required to be conveyed by the instruction or otherwise requisite for the operation of the procedures under these Regulations may be conveyed;
 - (e) as to the form and manner in which any communication contemplated by these Regulations is to be made if it is to be regarded as a valid communication;
 - (f) as to the circumstances in which an instruction may be given to a company controller on conditions or on terms that an act is not to be done rather than done or as to the circumstances in which a company controller is to refuse to act on an instruction from an approved person;
 - (g) (where an instruction may be communicated by a person acting on behalf of another) as to the persons who may communicate a given instruction by means of a valid communication;
 - (h) where an act is required by these Regulations to be done on a day or by reference to a day, as to the time on that day or by reference to which on that day the act is to be done;
 - (i) as to the periods of time within which any of the procedures or duties set out in these Regulations must be completed or complied with;
 - (j) as to the information or records to be kept by the persons responsible for or involved in the operation of the procedures set out in these Regulations and the period of their retention;
 - (k) governing the keeping of a record of entitlements or account holders, including the procedures to be followed to reconcile the records one with another and the occasions on which the reconciliation is to take place;
- (1) governing the form and manner in which statements of account must be issued by company controllers;
- (m) as to any circumstances in which any participant should act through the agency of the Operator in connection with the procedures rather than act directly;
 - (n) governing the performance of the functions of a controller by the Operator under regulation 62;
 - (o) as to any procedures to be followed or requirements complied with by the Operator, a company or participant where a unit of an uncertificated security is cancelled, redeemed, sub-divided or consolidated;
 - (p) as to supplementary procedures or requirements in relation to an offer for all or any units of an uncertificated security, including in relation to the transfer of uncertificated shares to an offeror where an offeror is entitled and bound to acquire such shares under section 430(2) or section 430B(2) of the 1985 Act; and
 - (q) as to any supplementary procedures or requirements relating to the admission or continued participation of any person as a participant in the system or the resignation, restriction, suspension or withdrawal of such participation.
- (3) No person shall be taken to have contravened a rule if he shows that at the time of the alleged contravention the rule had not been published as required by (in the case of rules made by the Secretary of State) paragraph (6) or (where power to make rules under this regulation is delegated to the Operator) paragraph 8 of Schedule 9 to the 1986 Act as applied by regulation 3(8).
- (4) Where power to make rules under this regulation is delegated to the Operator, no rules made by it shall come into effect unless approved by the Secretary of State.

Without prejudice to any other ground on which the Secretary of State may withhold his approval, the Secretary of State shall not give his approval unless he is satisfied that the Operator has complied

with the requirements of paragraph 12 of Schedule 9 to the 1986 Act as applied by regulation 3(8) (consultation).

(5) The following provisions of this regulation have effect where rules are made under this regulation by the Secretary of State⁽¹⁾.

(6) The rules shall be made by an instrument in writing and may make different provision for different cases. Immediately after an instrument is made it shall be printed and made available to the public with or without payment.

(7) The production of a printed copy of an instrument purporting to be made under this regulation on which is endorsed a certificate signed by the Secretary of State and stating:

- (a) that the instrument was made by the Secretary of State;
- (b) that the copy is a true copy of the instrument; and
- (c) that on a specified date the instrument was made available to the public as required by paragraph (3) above,

shall be *prima facie* evidence or, in Scotland, sufficient evidence of the facts stated in the certificate. Any certificate purporting to be signed as mentioned in this paragraph shall be deemed to have been duly signed unless the contrary is shown.

Information required to be given by these Regulations

113.—(1) A person shall not be required under any provision of these Regulations to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

(2) Subject to paragraph (4) section 179 and 180 of the 1986 Act shall apply as if:

- (a) the information referred to in section 179(2) was information relating to the business or other affairs of any person obtained by a person mentioned in paragraph

(3) for the purposes of, or in the discharge of his functions under, these Regulations or provisions made under them (whether or not by virtue of any requirement to supply it made under these Regulations or those provisions);

- (b) the persons mentioned in section 179(3) were those mentioned in paragraph (3);
- (c) the references in section 180(1)(b), (h) and (m) to the 1986 Act included reference to these Regulations or provisions made under them;
- (d) the reference in section 180(1)(b) to proceedings before the Tribunal included a reference to proceedings on a matter referred to it under or by virtue of these Regulations;
- (e) the reference in section 180(1)(e)(iii) to the body administering a scheme established under section 54 of the 1986 Act included a reference to any person administering a scheme established under regulation 10 1;
- (f) the reference in section 180(1)(p) to a person appointed under section 106 of the 1986 Act included a reference to a person appointed under that section as it applies by virtue of regulation 110; and
- (g) the reference in section 180(1)(q) to an auditor of an authorised person or a person approved under section 108 of the 1986 Act included reference to an auditor of a participant or a person approved under section 108 of the 1986 Act as it applies by virtue of regulation 98.

(3) The persons mentioned in paragraph (2) are:

(1) Regulation 3(10) makes equivalent provision where power to make rules under this regulation is delegated to the Operator.

- (a) the Secretary of State;
- (b) the Operator;
- (c) the Director General of Fair Trading;
- (d) any person administering a scheme established under regulation 105;
- (e) any member of the tribunal;
- (f) the Complaints Commissioner;
- (g) any person appointed to exercise functions under section 106 of the 1986 Act as it applies by virtue of regulation 110;
- (h) any designated agency; and
- (i) any officer or servant of such a person.

(4) Section 179 of the 1986 Act as it applies by virtue of paragraph (2) shall not preclude the disclosure by any person of information for the purposes of enabling or assisting a person to discharge functions under these Regulations, or in compliance with the lawful requirements of an insolvency practitioner or the official receiver; nor shall section 179 itself preclude the disclosure of information by any person for the purposes of enabling or assisting a person to discharge functions under these Regulations.

(5) Section 181 of the 1986 Act shall apply to information relating to the business or other affairs of any person which was obtained (whether or not by virtue of any requirement to supply it) directly or indirectly by the Operator or any person appointed to exercise any powers under section 106 of the 1986 Act as it applies by virtue of regulation 110 (or any officer or servant of the Operator or any such person) for the purposes of or in the discharge of any functions under these Regulations or provisions made under them as it applies to information of the kind mentioned in section 181(3) of the 1986 Act.

Data protection

114. Section 190 of the 1986 Act shall apply as if in subsection (a) the reference to a self-regulating organisation included a reference to the Operator, and as if the reference to the functions there mentioned included a reference to functions relating to admission to the system, termination of participation, the imposition of restrictions, and the replacement and supervision of participants.

Restriction of Rehabilitation of Offenders Act 1974

115. Section 189 of the 1986 Act shall apply as if in Schedule 14 to that Act:

- (a) Part I (exempted proceedings) included a reference to proceedings with respect to admission to the system, termination of participation, the imposition of restrictions, and the replacement and supervision of participants;
- (b) Part II, first column (exempted questions) included a reference to the Operator, and the second column thereof included a reference to a participant an applicant for participation and an individual who is an associate of such participant or applicant (whether or not an individual);
- (c) Part III, paragraph 1, first column (exempted actions) included a reference to the Operator; and
- (d) Part II, paragraph 4, first column (exempted questions) and Part III, paragraph 2, first column (exempted actions) included a reference to a participant and an applicant for participation.

Duties to be actionable

116.—(1) Unless otherwise provided in these Regulations (and in particular subject to paragraph (2)) any duty imposed on a person (other than the Secretary of State or the Director General of Fair Trading) by virtue of these Regulations is a duty owed by him:

- (a) to any person to whom the duty is stated as being owed, or
- (b) failing any such statement, to any person who may be affected by a failure to perform the duty,

and a breach of the duty is actionable (subject to the defences and other incidents applying to actions for breach of statutory duty and to paragraph (3)).

(2) A duty imposed on the Operator by, or relating to the matters dealt with in, the following provisions of these Regulations shall not be actionable under paragraph (1): Parts II (other than regulation 4(a)), IX, X, XII and XIV.

(3) No person shall be regarded as being in breach of any duty imposed on that person by virtue of these Regulations if and to the extent that compliance by that person with the duty is, in all the circumstances, impossible.

(4) Where any duty imposed by virtue of these Regulations on a person, being a body corporate, has been breached, and it is established that any officer of the body or any person who was purporting to act in that capacity knowingly and wilfully participated in the breach, that person shall be jointly and severally liable with the body corporate for the breach.

Operator’s exemption from liability for damages

117.—(1) Section 187(4) of the 1986 Act shall apply to the Operator and to its officers, servants and agents in the exercise of their regulatory functions under these Regulations as it does to the functions mentioned in that section.

(2) In this regulation “regulatory functions” means any functions under, or relating to the matters dealt with in, Parts II (other than regulation 4(a)), IX, X, XII and XIV.

Breach of duty not to avoid transactions

118. The breach of any duty imposed on any person by these Regulations does not, unless otherwise provided, of itself invalidate any transfer of a unit of a security (or the entitlement to it) effected or other act done in contravention of, or as a consequence of the contravention .of, that duty.

Memorandum and articles of a company to be subject to the provisions of Regulations

119.—(1) For the purposes of section 14 of the 1985 Act (Effect of memorandum and articles) the provisions of these Regulations, in so far as they concern members of the company, shall be regarded as provisions of the 1985 Act and accordingly the provisions of the memorandum and articles of association of a company shall have effect subject to the provisions of these Regulations, so far as applicable.

(2) Where the shares, or any class of shares, of a company have been converted into, or issued in, uncertificated form under the provisions of Part IX of these Regulations the board of directors of the company may by resolution alter the memorandum and articles of association of the company in so far as may be necessary to remove any inconsistency between the memorandum or those articles of association and these Regulations.

(3) Where any alteration is made in a company’s memorandum or articles under this regulation, a copy of the resolution of the directors concerned, together with a copy of the memorandum or articles as amended, shall be delivered to the registrar of companies for registration not later than 10 working days after the resolution of the board of directors concerned is passed.

Subsection (3) of section 18 of the 1985 Act shall have effect in relation to a breach of the requirement in this paragraph as it applies in relation to a breach of that section.

Terms of issue of securities

120.—(1) The terms of issue of a security may make additional provision with respect to the holding and transfer of units of the security under these Regulations and in relation to the holding and transfer of entitlements to such units.

This regulation is without prejudice to regulation 81(2).

(2) The holder of an entitlement to a unit of an uncertificated security and a person for whom it is held shall be bound by the terms of issue of the security applicable to such holder or person respectively.

In particular the holder of an entitlement to a share in a company and the person for whom it is held shall be bound by the terms of the memorandum and articles of the company applicable to such holder or person respectively.

Consequential provisions

121. Schedule 8 to these Regulations has effect so as to make provision consequential on and further to these Regulations.

Transitional provisions

122. Schedule 9 to these Regulations shall have effect with respect to the transitional matters therein mentioned.

Application to Northern Ireland

123. In the application of these Regulations to Northern Ireland:

- (a) in regulations 16, 84(5), 119(1) and paragraph 1 of Schedule 8 references to the 1985 Act include references to the 1986 Order;
- (b) in regulation 18(2):
 - (i) for the reference to section 53(1)(c) of the Law of Property Act 1925 there is substituted a reference to section 6 of the Statute of Frauds (Ireland) 1695(2);
 - (ii) for the reference to section 136 of the Law of Property Act 1925 there is substituted a reference to section 87 of the Judicature (Northern Ireland) Act 1978(3);
- (c) in regulation 2(1), in the definitions of “insolvency practitioner” and “official receiver”, the references respectively to sections 388 and 399 of the Insolvency Act 1986 include a reference respectively to Articles 3 (disregarding paragraph thereof) and 2 of the Insolvency (Northern Ireland) Order 1989(4) and in regulation 47 the reference to that Act includes a reference to that Order;
- (d) in regulation 69(2) for the reference to section 4 of the Powers of Attorney Act 1971 there is substituted a reference to section 3 of the Powers of Attorney Act (Northern Ireland) 1971(5);
- (e) in regulation 64(4) the reference to the Interpretation Act 1978 included a reference to the Interpretation Act (Northern Ireland) 1954;

(2) 1695 c. 12 (Ir.).

(3) 1978 c. 23.

(4) S.I.1989/2405 (N.I. 19).

(5) 1971 c. 33 (N.I.).

- (f) references to provisions of the 1985 Act are references to the equivalent provisions of the 1986 Order and in particular for the references to the 1985 Act listed in column 1 of Schedule 10 to these Regulations in the provisions of these Regulations listed in column 2 of that Schedule there is substituted the references to the 1986 Order listed in column 3 of that Schedule; and
- (g) references to the Companies Acts include references to the Companies Orders.