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STATUTORY INSTRUMENTS

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**2005 No. 1788**

**COMPANIES**

**The Community Interest Company Regulations 2005**

*Made* - - - - - *30th June 2005*

*Coming into force* - - - *1st July 2005*

Whereas a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament;

Now therefore, in exercise of the powers conferred upon her by sections 30(1) to (4), 30(7), 31, 32(3), (4) and (6), 34(3), 35(4) to (6), 36(2), 37(7), 47(12) and (13), 57(1) and (2), 58, 59(1) and 62(2) and (3) of and paragraph 4 of Schedule 4 to the Companies (Audit, Investigations and Community Enterprise) Act 2004<sup>(1)</sup>, the Secretary of State hereby makes the following Regulations:

**PART 1**

**Citation, commencement and interpretation**

**Citation and commencement**

1. These Regulations may be cited as the Community Interest Company Regulations 2005 and shall come into force on 1 July 2005.

**Interpretation**

2. In these Regulations—

“the 1985 Act” means the Companies Act 1985<sup>(2)</sup>;

“the 2004 Act” means the Companies (Audit, Investigations and Community Enterprise) Act 2004;

“aggregate dividend cap” means a cap set under regulation 22 for the purposes of determining maximum aggregate dividends;

“appellant” means, in respect of an appeal to the Appeal Officer, the person bringing the appeal;

“applicable share dividend cap” has the meaning given in regulation 18(2) and (3);

“applicable interest cap” has the meaning given in regulation 21(3);

“asset-locked body” means—

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(1) 2004 c. 27.

(2) 1985 c. 6.

- (a) a community interest company, charity or Scottish charity; or
  - (b) a body established outside Great Britain that is equivalent to any of those persons;
- “community interest statement” means a statement in a form approved by the Regulator which

- (a) contains a declaration that the company will carry on its activities for the benefit of the community or a section of the community; and
- (b) indicates how it is proposed that the company’s activities will benefit the community (or a section of the community);

“distributable profits” means, in relation to a company, its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made, and is to be interpreted in accordance with the provisions of section 263(3) of the 1985 Act relating to the meaning of a company’s profits available for distribution;

“election” means any election to public office held in Great Britain or elsewhere;

“employee” means a person who has entered into or works under (or, where the employment has ceased, worked under)—

- (a) a contract of service or apprenticeship; or
- (b) a contract for services under which it is agreed that a specified individual is to perform services,

whether express or implied, and (if it is express) whether oral or in writing;

“employer” means the person by whom an employee is (or, where the employment has ceased, was) employed;

“exempt dividend” has the meaning given in regulation 17(3);

“governmental authority” includes—

- (a) any national, regional or local government in Great Britain or elsewhere, including any organ or agency of any such government;
- (b) the European Community, or any of its institutions or agencies; and
- (c) any organisation which is able to make rules or adopt decisions which are legally binding on any governmental authority falling within sub-paragraph (a) or (b);

“interest cap” means a cap set under regulation 22 for the purpose of determining the maximum rate of interest payable under regulation 21;

“manager” means a person appointed by order under section 47(1) of the 2004 Act;

“maximum aggregate dividend” has the meaning given to it in regulation 19;

“maximum dividend per share” has the meaning given to it in regulation 18(1);

“paid up value” means, in respect of any share in a company, the sum of—

- (a) so much of the share’s nominal value as has been paid up; and
- (b) any premium on that share paid to the company;

“performance-related rate” means any rate which is linked to the company’s profits or turnover or to any item in the balance sheet of the company;

“political party” includes any person standing, or proposing to stand, as a candidate at any election, and any person holding public office following his election to that office;

“political campaigning organisation” means any person carrying on, or proposing to carry on activities—

- (a) to promote, or oppose, changes in any law applicable in Great Britain or elsewhere, or any policy of a governmental or public authority (unless such activities are incidental to other activities carried on by that person); or
- (b) which could reasonably be regarded as intended to affect public support for a political party, or to influence voters in relation to any election or referendum (unless such activities are incidental to other activities carried on by that person);

“public authority” includes—

- (a) a court or tribunal; and
- (b) any person certain of whose functions are functions of a public nature;

“referendum” includes any national or regional referendum or other poll held in pursuance of any provision made by or under the law of any state on one or more questions or propositions specified in or in accordance with any such provision;

“relevant company” means a community interest company which is a company limited by shares or a company limited by guarantee with a share capital;

“share dividend cap” means a cap set under regulation 22 for the purpose of determining maximum dividends per share;

“subsidiary” has the meaning given to it in section 736 of the 1985 Act<sup>(3)</sup>; and

“unused dividend capacity” has the meaning given to it in regulation 20(2).

## PART 2

### The community interest test and excluded companies

#### **Political activities not to be treated as being carried on for the benefit of the community**

**3.—(1)** For the purposes of the community interest test the following activities are to be treated as not being activities which a reasonable person might consider are activities carried on for the benefit of the community:

- (a) the promotion of, or the opposition to, changes in—
  - (i) any law applicable in Great Britain or elsewhere; or
  - (ii) the policy adopted by any governmental or public authority in relation to any matter;
- (b) the promotion of, or the opposition (including the promotion of changes) to, the policy which any governmental or public authority proposes to adopt in relation to any matter; and
- (c) activities which can reasonably be regarded as intended or likely to—
  - (i) provide or affect support (whether financial or otherwise) for a political party or political campaigning organisation; or
  - (ii) influence voters in relation to any election or referendum.

(2) But activities of the descriptions prescribed in paragraph (1) are to be treated as being activities which a reasonable person might consider are activities carried on for the benefit of the community if—

- (a) they can reasonably be regarded as incidental to other activities, which a reasonable person might consider are being carried on for the benefit the community; and

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<sup>(3)</sup> Section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

- (b) those other activities cannot reasonably be regarded as incidental to activities of any of the descriptions prescribed in paragraph (1).

#### **Other activities not to be treated as being carried on for the benefit of the community**

4. For the purposes of the community interest test, an activity is to be treated as not being an activity which a reasonable person might consider is an activity carried on for the benefit of the community if, or to the extent that, a reasonable person might consider that that activity benefits only the members of a particular body or the employees of a particular employer.

#### **Section of the community**

5. For the purposes of the community interest test, any group of individuals may constitute a section of the community if—

- (a) they share a readily identifiable characteristic; and
- (b) other members of the community of which that group forms part do not share that characteristic.

#### **Excluded companies**

6. For the purposes of section 35(6) of the 2004 Act, the following are excluded companies:

- (a) a company which is (or when formed would be) a political party;
- (b) a company which is (or when formed would be) a political campaigning organisation; or
- (c) a company which is (or when formed would be) a subsidiary of a political party or of a political campaigning organisation.

## **PART 3**

### **Requirements concerning the memorandum and articles**

#### **Company without share capital**

7. A community interest company which is a company limited by guarantee without a share capital must include in its memorandum or articles the provisions prescribed by Schedule 1.

#### **Company with share capital**

8. A community interest company which is a company limited by shares or a company limited by guarantee with a share capital must include in its memorandum or articles either—

- (a) the provisions prescribed by Schedule 2; or
- (b) the provisions prescribed by Schedule 3.

#### **Alternative provisions**

9.—(1) For paragraph 1(4)(a) of the provisions prescribed by Schedule 1, 2 or 3 a community interest company may substitute—

““charitable body” means a charity, Scottish charity or a body established outside Great Britain that is equivalent to any of those persons;”

(2) If a community interest company makes the substitution permitted by paragraph (1), it must also for every reference to “asset-locked body” in paragraph 1(2) of the provisions prescribed by Schedule 1, 2 or 3 substitute a reference to “charitable body”.

#### **Declaration of dividends**

**10.** A relevant company must not include in its memorandum or articles any provision which purports to permit a dividend to be declared otherwise than by an ordinary or special resolution of its members.

## **PART 4**

### **Prescribed documents**

#### **Prescribed formation documents**

**11.—**(1) For the purposes of section 36 of the 2004 Act, the prescribed formation documents are—

- (a) a community interest statement signed by each person who is to be a first director of the company; and
- (b) a declaration that the company, when formed, will not be an excluded company.

(2) The declaration referred to in paragraph (1)(b) must be in a form approved by the Regulator and must be made by each person who is to be a first director of the company.

#### **Prescribed conversion documents**

**12.—**(1) For the purposes of section 37 of the 2004 Act, the prescribed conversion documents are—

- (a) a community interest statement signed by each person who is a director of the company;
- (b) a declaration that the company is not an excluded company; and
- (c) either—
  - (i) a declaration that the company is not a charity or a Scottish charity; or
  - (ii) if the company is not a Scottish charitable company within the meaning of section 40 of the 2004 Act, a declaration that the Charity Commissioners have given the company the written consent required by section 39 of the 2004 Act.

(2) The declarations referred to in sub-paragraphs (b) and (c) of paragraph (1) must be in a form approved by the Regulator and must be made by each person who is a director of the company.

## **PART 5**

### **Alteration of objects**

#### **Requirement for Regulator’s approval**

**13.** An alteration of the memorandum of a community interest company with respect to the statement of the company’s objects does not have effect except in so far as it is approved by the Regulator.

### Documents to be delivered to registrar of companies

**14.**—(1) If a copy of a special resolution under section 4(1) of the 1985 Act is delivered to the registrar of companies pursuant to section 380 of the 1985 Act<sup>(4)</sup> (registration of resolutions), the company must also deliver—

- (a) a community interest statement; and
- (b) a statement, in a form approved by the Regulator, of the steps that have been taken to bring the proposed alteration to the notice of persons affected by the company's activities.

(2) The community interest statement and the statement under paragraph (1)(b) must be signed by each person who is a director of the company.

### Decisions etc

**15.**—(1) On receiving the copies of the special resolution under section 4(1) of the 1985 Act, the community interest statement delivered under regulation 14(1)(a) and the statement delivered under regulation 14(1)(b), the registrar of companies must—

- (a) forward a copy of each of the documents to the Regulator; and
- (b) retain the documents pending the Regulator's decision.

(2) The Regulator must decide whether to approve the proposed alteration of the memorandum of the community interest company with respect to the statement of the company's objects.

(3) The Regulator may approve the proposed alteration if he considers that—

- (a) the statement of the company's objects as altered by the special resolution will comply with the requirements imposed by and by virtue of section 32 of the 2004 Act;
- (b) the company will satisfy the community interest test; and
- (c) the company has taken reasonable steps to bring the proposed alteration to the notice of persons affected by its activities.

(4) In considering whether the company will satisfy the community interest test, the Regulator shall have regard to—

- (a) the statement of the company's objects as altered by the special resolution;
- (b) the community interest statement; and
- (c) any other relevant considerations.

(5) The Regulator must give notice of the decision to the registrar (but the registrar is not required to record it).

(6) The registrar shall not—

- (a) record the special resolution delivered pursuant to section 380 of the 1985 Act;
- (b) register any copy of the altered memorandum delivered pursuant to section 6 of the 1985 Act; or
- (c) cause notice of that alteration to be published pursuant to section 711 of the 1985 Act<sup>(5)</sup> (public notice by registrar of receipt of documents),

unless and until the Regulator has given notice of a decision to approve the proposed alteration.

(7) If the Regulator gives notice of a decision to approve the proposed alteration, the registrar shall also—

- (a) record the community interest statement; and

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(4) There are amendments to section 380 of the 1985 Act but none is relevant to these Regulations.

(5) There are amendments to section 711 of the 1985 Act but none is relevant to these Regulations.

(b) record the statement delivered under regulation 14(1)(b).

(8) If the Regulator decides not to approve the proposed alteration of the memorandum of the community interest company with respect to the statement of the company's objects, the company may appeal to the Appeal Officer against the decision.

### **Exemptions**

**16.** Regulations 13 to 15 do not apply where a community interest company is to cease being a community interest company by becoming a charity or a Scottish charity and the special resolution to alter the memorandum of the company with respect to the statement of its objects is forwarded to the registrar of companies in accordance with section 54 of the 2004 Act.

## **PART 6**

### **Restrictions on distributions and interest**

#### **Declaration of dividends**

**17.—(1)** A relevant company may declare a dividend to its members only —

- (a) to the extent that its memorandum and articles permit it to do so;
- (b) if an ordinary or special resolution of the company's members has approved the declaration of the dividend; and
- (c) if the declaration of the dividend does not cause —
  - (i) the total amount of dividend declared on any of the company's shares for the financial year for which it is declared to exceed the maximum dividend per share for that financial year; or
  - (ii) the total amount of all the dividends declared on shares in the relevant company for the financial year for which it is declared to exceed the maximum aggregate dividend for that financial year.

(2) Paragraph (1)(c) does not apply to a dividend if, or to the extent that, it is an exempt dividend.

(3) A dividend declared on a share in a relevant company is an exempt dividend if one of the conditions specified in paragraph (4) and one of the conditions specified in paragraph (5) is satisfied in respect of it.

(4) The conditions specified in this paragraph are—

- (a) that the dividend is declared on a share which is held by an asset-locked body (but this condition is not satisfied in respect of a share which the directors recommending the dividend are aware is being held on trust for a person who is not an asset-locked body);
- (b) that the dividend is declared on a share which is held on behalf of an asset-locked body (or is believed by the directors recommending the dividend to be so held).

(5) The conditions specified in this paragraph are—

- (a) that the Regulator has consented to the declaration of the dividend;
- (b) that the asset-locked body by or on behalf of which the share on which the dividend is declared is held (or on behalf of which the directors declaring the dividend believe that it is held) is named in the memorandum or articles of the company as a possible recipient of the assets of the company.

(6) If a relevant company has made the substitutions prescribed in regulation 9(2), references to “asset-locked body” in this article shall have effect as if there were substituted for them references to “charitable body”, with the meaning prescribed in regulation 9(1).

### **Maximum dividend per share**

**18.**—(1) The maximum dividend per share for a financial year is the dividend which a relevant company declares on a share when the total amount of dividend declared on that share for that year (when expressed as a percentage of the paid up value of the share) equals that share’s applicable share dividend cap.

(2) The applicable share dividend cap of a share in a relevant company is the share dividend cap which had effect in relation to that share at the time that the share was issued or the company became a community interest company, whichever is the later.

(3) Where the expression of the applicable dividend cap includes reference to a rate or figure determined by any person other than the company, the Regulator or the Secretary of State, the maximum dividend per share for any financial year shall be calculated by reference to that rate or figure as it had effect at the beginning of the first day of that financial year.

### **Maximum aggregate dividend**

**19.** The maximum aggregate dividend for a financial year of a relevant company is declared when the total amount of all dividends declared on its shares for that year, less the amount of any exempt dividends, equals (when expressed as a percentage of the relevant company’s distributable profits) the aggregate dividend cap which had effect in relation to that company on the first day of the financial year in respect of which the dividends are declared.

### **Carrying forward of unused dividend capacity from previous financial years**

**20.**—(1) Notwithstanding regulation 17(1)(c)(i), but subject to regulation 17(1)(c)(ii), the total amount of dividends declared on a share in a relevant company for a financial year may, subject to the company’s articles, include the whole or any part of the share’s unused dividend capacity.

(2) For the purposes of this regulation, a share’s unused dividend capacity is A minus B where—

A is the aggregate of any sums by which, for any of the four financial years immediately preceding the financial year for which a dividend is to be declared under this regulation, the total amount of dividend declared and paid on the share for that financial year was less than the maximum dividend per share for that financial year; and

B is any part of A which has already been distributed by way of a dividend declared and paid for a previous financial year.

### **The interest cap**

**21.**—(1) This regulation applies to debentures issued by, and debts of, a community interest company in respect of which—

- (a) a performance-related rate of interest is payable; and
- (b) the agreement to pay interest at a performance-related rate was entered into by the company on or after the date on which it became a community interest company.

(2) In connection with debentures and debts of the kind specified in paragraph (1), a community interest company shall not be liable to pay, and shall not pay, interest at a higher rate than the applicable interest cap.

(3) The applicable interest cap is the interest cap which had effect at the time that the agreement to pay interest at a performance-related rate was made.

(4) Where the expression of the interest cap includes reference to a rate or figure determined by any person other than the company, the Regulator or the Secretary of State, the interest payable on any debt or debenture to which the interest cap applies shall be calculated by reference to that rate or figure as it had effect at the beginning of the first day of the financial year in which the interest became due.

(5) Nothing in paragraph (2) shall be taken as releasing a community interest company from liability to pay, or as preventing a community interest company from paying—

- (a) interest which accrued before the company became a community interest company; or
- (b) arrears of interest which if it had been paid at the time it became due would not have breached paragraph (2).

### **Initial level and subsequent variation of dividend caps and interest cap**

**22.**—(1) Subject to paragraph (3)—

- (a) the share dividend cap shall be that percentage of the paid up value of a share in a relevant company which is 5 percentage points higher than the Bank of England's base lending rate;
- (b) the aggregate dividend cap shall be 35 per cent of a relevant company's distributable profits; and
- (c) the interest cap shall be that percentage of the average amount of a community interest company's debt, or the sum outstanding under a debenture issued by it, during the 12 month period immediately preceding the date on which the interest on that debt or debenture becomes due (determined in accordance with Schedule 4) which is 4 percentage points higher than the Bank of England's base lending rate.

(2) For the purposes of paragraph (1), the Bank of England's base lending rate is the base lending rate most recently set by the Monetary Policy Committee of the Bank of England in connection with its responsibilities under Part II of the Bank of England Act 1998.

(3) The Regulator may from time to time, with the approval of the Secretary of State, set a new share dividend cap, aggregate dividend cap, or interest cap.

(4) A new cap set under paragraph (3)—

- (a) shall not take effect from a date less than three months after it is published; and
- (b) subject to paragraphs (5) to (7), may result in a change to both the level of any cap and the way in which it is expressed.

(5) The share dividend cap must be expressed as a percentage of the paid up value of the shares to which it applies.

(6) The aggregate dividend cap must be expressed as a percentage of distributable profits.

(7) The interest cap must be expressed as a percentage of the average amount of a debt, or the sum outstanding under a debenture, during the 12 month period immediately preceding the date on which the interest on that debt or debenture becomes due (determined in accordance with Schedule 4).

(8) The Secretary of State may from time to time require the Regulator to review any cap set under this regulation.

### **Distribution of assets on a winding up**

**23.**—(1) This regulation applies where—

- (a) a community interest company is wound up under the Insolvency Act 1986<sup>(6)</sup>; and
  - (b) some property of the company (the “residual assets”) remains after satisfaction of the company’s liabilities.
- (2) Subject to paragraph (3), the residual assets shall be distributed to those members of the community interest company (if any) who are entitled to share in any distribution of assets on the winding up of the company according to their rights and interests in the company.
- (3) No member shall receive under paragraph (2) an amount which exceeds the paid up value of the shares which he holds in the company.
- (4) If any residual assets remain after any distribution to members under paragraph (2) (the “remaining residual assets”), they shall be distributed in accordance with paragraphs (5) and (6).
- (5) If the memorandum or articles of the company specify an asset-locked body to which any remaining residual assets of the company should be distributed, then, unless either of the conditions specified in sub-paragraphs (b) and (c) of paragraph (6) is satisfied, the remaining residual assets shall be distributed to that asset-locked body in such proportions or amounts as the Regulator shall direct.
- (6) If—
- (a) the memorandum and articles of the company do not specify an asset-locked body to which any remaining residual assets of the company should be distributed;
  - (b) the Regulator is aware that the asset-locked body to which the memorandum or articles of the company specify that the remaining residual assets of the company should be distributed is itself in the process of being wound up; or
  - (c) the Regulator—
    - (i) has received representations from a member or director of the company stating, with reasons, that the asset-locked body to which the memorandum or articles of the company specify that the remaining residual assets of the company should be distributed is not an appropriate recipient of the company’s remaining residual assets; and
    - (ii) has agreed with those representations,then the remaining residual assets shall be distributed to such asset-locked bodies, and in such proportions or amounts, as the Regulator shall direct.
- (7) In considering any direction to be made under this regulation, the Regulator must—
- (a) consult the directors and members of the company, to the extent that he considers it practicable and appropriate to do so; and
  - (b) have regard to the desirability of distributing assets in accordance with any relevant provisions of the company’s memorandum and articles.
- (8) The Regulator must give notice of any direction under this regulation to the company and the liquidator.
- (9) This regulation has effect notwithstanding anything in the Insolvency Act 1986.
- (10) This regulation has effect subject to the provisions of the Housing Act 1996<sup>(7)</sup> and the Housing (Scotland) Act 2001<sup>(8)</sup>.
- (11) Any member or director of the company may appeal to the Appeal Officer against a direction of the Regulator made under this regulation.

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(6) 1986 c. 45.  
(7) 1996 c. 52.  
(8) 2001 asp10.

### **Redemption and purchase of shares**

**24.** A relevant company may not distribute assets to its members by way of the redemption or purchase of the company's own shares, unless the amount to be paid by the company in respect of any such share does not exceed the paid up value of the share.

### **Reduction of share capital**

**25.** A relevant company may not distribute assets to its members by way of a reduction of the company's share capital unless—

- (a) the reduction is made by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up; or
- (b) the amount to be paid by the company to members in paying off paid up share capital does not exceed the paid up value of their respective shares.

## **PART 7**

### **Community interest company report**

#### **General**

**26.**—(1) Every community interest company report shall contain—

- (a) a fair and accurate description of the manner in which the company's activities during the financial year have benefited the community;
- (b) a description of the steps, if any, which the company has taken during the financial year to consult persons affected by the company's activities, and the outcome of any such consultation; and
- (c) the information specified in paragraphs 1 to 14 of Part 1 of Schedule 6 to the 1985 Act<sup>(9)</sup> (chairman's and directors' emoluments, pensions and compensation for loss of office) save that the information specified in paragraphs 2 to 14 shall be given only in the case of a company which is not a quoted company.

(2) If, during a financial year, a community interest company has transferred any of its assets other than for full consideration—

- (a) to any asset-locked body (other than by way of an exempt dividend); or
- (b) for the benefit of the community other than by way of transfer to an asset-locked body,

its community interest report for that financial year shall specify the amount, or contain a fair estimate of the value, of such transfer.

(3) If—

- (a) a community interest company has provided the information required by paragraph (1) (c) in its copy of the annual accounts for the year delivered to the registrar of companies under section 242(1) of the 1985 Act<sup>(10)</sup>; and
- (b) its community interest company report contains a statement that details of the remuneration of the directors of the company during the financial year may be found in the notes to the annual accounts of the company,

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<sup>(9)</sup> Part 1 of Schedule 6 to the 1985 Act was inserted by schedule 4 to the Companies Act 1989. Relevant amending instruments are S.I. [1997/570](#) (regulations 2 to 6), S.I. [2001/3649](#) (article 33) and S.I. [2002/1986](#) (regulation 10).

<sup>(10)</sup> Section 242 was inserted by section 11 of the Companies Act 1985. It has been amended, but the amendments are not relevant to these Regulations.

the community interest company report need not contain the information required by paragraph (1) (c).

### **Information about dividends**

**27.**—(1) This regulation applies to the community interest company report of any community interest company—

- (a) which has declared, or whose directors propose to declare, a dividend for the financial year to which the report relates; or
- (b) which has declared a dividend for any of the four financial years immediately preceding that financial year.

(2) The report must state—

- (a) the amount of any dividend declared, or proposed to be declared, by the company on each of its shares for the financial year to which the report relates; and
- (b) for each of the four financial years immediately preceding the financial year to which the report relates (in so far as the company was formed and trading during that period)—
  - (i) the amount of any dividend declared and paid on each of the company's shares; and
  - (ii) the maximum dividend per share in respect of each of the company's shares.

(3) The report must also explain how the declaration or proposed declaration of any dividend declared, or proposed to be declared, by the company in respect of the financial year to which the report relates complies, or will comply, with regulations 17 to 20.

(4) The explanation provided under paragraph (3) must include details of—

- (a) in the case of an exempt dividend, why it is an exempt dividend;
- (b) in the case of any other dividend—
  - (i) the applicable share dividend cap and the maximum dividend per share for each share on which the dividend has been, or is to be, declared;
  - (ii) the amount of any unused dividend capacity distributed or to be distributed as part of the dividend declared, or proposed to be declared; and
  - (iii) the maximum aggregate dividend,and how each of these has been determined.

### **Information about debts or debentures on which a performance-related rate is payable**

**28.**—(1) Where a community interest company has at any time during the financial year a debt outstanding, or a debenture in issue, to which regulation 21 applies, its community interest company report must state—

- (a) the rate of interest payable on that debt or debenture as calculated over a 12 month period ending with the most recent date on which interest became payable in respect of that debt or debenture during the financial year; and
- (b) the applicable interest cap applying to that debt or debenture,

and how each of these has been determined.

(2) Where the company has at any time during the financial year a debt outstanding, or a debenture in issue, to which regulation 21 does not apply, but on which a performance-related rate is payable, its community interest company report must state—

- (a) the rate of interest payable on that debt or debenture as calculated over a 12 month period ending with the most recent date on which interest became payable in respect of that debt or debenture during the financial year; and
- (b) why regulation 21 does not apply to that debt or debenture.

### **Application of the 1985 Act**

**29.**—(1) The following provisions of the 1985 Act shall apply to the community interest company report as they apply to the directors' report:

- section 234A(**11**) (approval and signing of directors' report);
- section 238(**12**) (persons entitled to receive copies of accounts and reports);
- section 239(**13**) (right to demand copies of accounts and reports);
- section 241(**14**) (accounts and reports to be laid before company in general meeting);
- section 244(**15**) (period allowed for laying and delivering accounts and reports);
- section 245(1) and (2) (**16**) (voluntary revision of accounts or directors' report); and
- section 252(1), (2) and (4) (**17**) (election to dispense with laying of accounts and reports before general meeting).

## **PART 8**

### **Managers**

#### **Remuneration**

- 30.**—(1) The Regulator is authorised to determine the amount of a manager's remuneration.
- (2) The remuneration of a manager shall be payable out of the income of the community interest company in respect of which the manager was appointed.
- (3) The Regulator is authorised to disallow any amount of remuneration of a manager if—
- (a) the time specified in the notice referred to in regulation 32(2) has expired; and
  - (b) the Regulator—
    - (i) has considered such representations, if any, as are duly made in response to such a notice; and
    - (ii) is satisfied that the manager has failed in such manner as is set out in subparagraph (a)(i) or (ii) of regulation 32(1) and specified in such a notice.

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(11) Section 234A of the 1985 Act was inserted by section 8(1) of the Companies Act 1989.

(12) Section 238 of the 1985 Act was inserted by section 10 of the Companies Act 1989. Relevant amending instruments are S.I. [2000/3373](#) (article 12) and S.I. [2002/1986](#) (regulation 10).

(13) Section 239 of the 1985 Act was inserted by section 10 of the Companies Act 1989. Relevant amending instruments are S.I. [2000/3373](#) (article 13) and S.I. [2002/1986](#) (regulation 10).

(14) Section 241 of the 1985 Act was inserted by section 11 of the Companies Act 1989. It has been amended by S.I. [2002/1986](#) (regulation 10).

(15) Section 244 of the 1985 Act was inserted by section 11 of the Companies Act 1989. It has been amended by regulation 10 of S.I. [2002/1986](#) and by regulation 9 of S.I. [2004/2947](#).

(16) Section 245(1) and (2) of the 1985 Act was inserted by section 12 of the Companies Act 1989. Relevant amending instruments are S.I. [2002/1986](#) (regulation 10) and S.I. [2004/2947](#) (regulation 10 and paragraph 11 of Schedule 1).

(17) Section 252(1), (2) and (4) of the 1985 Act was inserted by section 16 of the Companies Act 1989.

## Security

31. The Regulator is authorised to require the manager to give security to him for the due discharge of the manager's functions within such time and in such form as the Regulator may specify.

## Failure and removal

32.—(1) Where—

- (a) it appears to the Regulator that a manager has failed—
  - (i) to give security within such time or in such form as the Regulator has specified; or
  - (ii) satisfactorily to discharge any function imposed on the manager by or by virtue of the order by which the manager was appointed or by regulation 33; and
- (b) the Regulator wishes to consider exercising his powers under regulation 30(3) or paragraph (3) of this regulation,

the Regulator shall give the manager, whether in person or by post, a written notice complying with paragraph (2).

(2) A notice given to a manager under paragraph (1) shall inform the manager of—

- (a) any failure under paragraph (1)(a) in respect of which the notice is issued;
- (b) the Regulator's power under regulation 30(3) to authorise the disallowance of any amount of remuneration if satisfied as to any such failure;
- (c) the Regulator's power under paragraph (3) to remove the manager if satisfied as to any such failure; and
- (d) the manager's right to make representations to the Regulator in respect of any such alleged failure within such reasonable time as is specified in the notice.

(3) The Regulator may remove a manager (whether or not he also exercises the power conferred by regulation 30(3)) if—

- (a) the time specified in the notice referred to in paragraph (2) has expired; and
- (b) the Regulator—
  - (i) has considered such representations, if any, as are duly made in response to such a notice; and
  - (ii) is satisfied that the manager has failed in such manner as is set out in paragraph (1) (a)(i) or (ii) and specified in such notice.

## Reports

33. The manager must make such reports to the Regulator as the Regulator may from time to time require on such matters and in such form as the Regulator specifies.

# PART 9

## The registrar of companies

### Modifications and amendments

34.—(1) The registrar of companies shall not cause to be published in the Gazette notice pursuant to section 711 of the 1985 Act of the receipt of documents under sections 37 or 54 of the 2004 Act unless the registrar records those documents pursuant to sections 38(6) or 55(6) of the 2004 Act.

(2) In section 715A of the 1985 Act(**18**) (interpretation), after subsection (2) insert—

“(3) References in this Part to the Companies Acts include Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.”

(3) In section 710B(1)(a) of the 1985 Act(**19**) (documents relating to Welsh companies), for “or the Insolvency Act 1986” substitute “, the Insolvency Act 1986 or Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004”.

(4) For the purposes of Part 24 of the 1985 Act, these Regulations shall be regarded as provisions of Part 2 of the 2004 Act.

## Documents

**35.**—(1) The registrar of companies shall, on receiving any notice under section 109(1) of the Insolvency Act 1986(**20**) (notice by liquidator of his appointment) in relation to a community interest company, provide a copy of that notice to the Regulator.

(2) The registrar of companies shall, on receiving any copy of a winding-up order forwarded under section 130(1) of the Insolvency Act 1986(**21**) (consequences of a winding-up order) in relation to a community interest company, provide the Regulator with a copy of that winding-up order.

## PART 10

### Fees

#### Fees payable by a community interest company

**36.** The fees set out in the second column of Schedule 5—

- (a) shall be the fees payable in connection with the Regulator’s functions in relation to the matters set out in the first column of that Schedule;
- (b) shall be payable as stated in the third column of that Schedule; and
- (c) shall be paid to the registrar of companies.

## PART 11

### The Appeal Officer

#### Time limits

**37.**—(1) Unless paragraph (2) applies, an appeal to the Appeal Officer must be made by sending a notice of appeal to the Regulator so that it is received within two months of the date upon which

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(18) Section 715A of the 1985 Act was inserted by section 127(1) of the Companies Act 1989.

(19) Section 710B of the 1985 Act was inserted by section 30(6) of the Welsh Language Act 1993 (c. 38).

(20) Section 109 of the Insolvency Act 1986 has been modified in relation to Scotland. By virtue of sub-paragraphs 23(4) and (5) of Schedule 8 to the Scotland Act 1998 (c. 46) (as amended by S.I. 2001/3649) anything directed to be done to the registrar of companies in Scotland by virtue of section 109(1) of the Insolvency Act 1986, shall instead be done to the Accountant in Bankruptcy.

(21) Section 130 of the Insolvency Act 1986 has been modified in relation to Scotland. By virtue of sub-paragraphs 23(2) and (3) of Schedule 8 to the Scotland Act 1998 (as amended by article 360 of S.I. 2001/3649) anything directed to be done to the registrar of companies in Scotland by virtue of section 130(1) of the Insolvency Act 1986, shall also be done to the Accountant in Bankruptcy.

the appellant was given reasons for the disputed order or decision in accordance with section 61(5) of the 2004 Act.

(2) When an appeal is brought against a direction of the Regulator made under regulation 23, it must be made by sending a notice of appeal to the Regulator so that it is received within three weeks of the date upon which notice of the disputed direction was given to the community interest company in accordance with regulation 23(8).

(3) On receiving the notice of appeal, the Regulator must—

- (a) send an acknowledgement of its receipt to the appellant together with a copy of any statement made under paragraph (4); and
- (b) forward the notice of appeal to the Appeal Officer endorsed with the date of receipt.

(4) Where paragraph (2) applies, the Regulator must forward with the notice of appeal a statement

- (a) of the date upon which notice of the disputed direction or decision was given to the community interest company in accordance with regulation 23(8); or
- (b) that no such notice was given.

### **Notice of appeal**

**38.**—(1) The notice of appeal must state—

- (a) the name and address of the appellant; and
- (b) an address for service in Great Britain.

(2) Unless regulation 37(2) applies, the notice of appeal must—

- (a) specify as precisely as the appellant is able the date or dates on which the appellant was given reasons by the Regulator for the disputed order or decision; or
- (b) include a statement that no such reasons were given.

(3) The notice of appeal must contain—

- (a) a statement of the grounds for the appeal;
- (b) details of the disputed order, decision or direction;
- (c) a succinct presentation of the arguments supporting each of the grounds of appeal; and
- (d) a schedule listing all the documents annexed to the notice of appeal.

(4) There shall be annexed to the notice of appeal—

- (a) in the case of a disputed order or decision, a copy of any reasons given by the Regulator under section 61(5) of the 2004 Act; and
- (b) as far as practicable a copy of every document on which the appellant relies.

(5) The notice of appeal must be signed and dated by the appellant, or on his behalf by his duly authorised officer or his legal representative.

### **Appeal procedure etc**

**39.**—(1) The Regulator may make a written response to the notice of appeal.

(2) Any such written response must be sent to the Appeal Officer so that it is received by him within two weeks of the date on which the Regulator received the notice of appeal or such further time as the Appeal Officer may allow.

(3) The Appeal Officer must send a copy of the written response to the appellant.

(4) The Appeal Officer may give the appellant and the Regulator the opportunity to make further written or oral representations.

(5) The Appeal Officer may specify the time and manner in which such further representations are to be made.

(6) The Appeal Officer may—

- (a) make enquiries of any person;
- (b) receive representations from any person;
- (c) hold any meeting or hearing; and
- (d) subject to these Regulations, follow such practice and procedure,

as he thinks fit, having regard to the just, expeditious and economical conduct of the appeal.

(7) The Appeal Officer may specify the time and place at which any meeting or hearing is to be held.

### **Determination of appeal**

**40.** In determining an appeal, the Appeal Officer shall have regard to all matters that appear to him to be relevant.

### **Dismissal of appeal**

**41.—**(1) The Appeal Officer may dismiss an appeal at any stage if he considers that—

- (a) the notice of appeal discloses no valid ground of appeal;
- (b) the notice of appeal fails to comply with the requirements of regulation 38; or
- (c) the appellant is not entitled to bring the appeal.

(2) The Appeal Officer must dismiss an appeal if he considers that the appeal was not brought within the time limits imposed by regulation 37 unless he is satisfied that the circumstances are exceptional.

(3) The Appeal Officer may dismiss an appeal at any stage at the request of the appellant.

### **Reasons**

**42.—**(1) The Appeal Officer must give reasons for a decision to—

- (a) dismiss an appeal;
- (b) allow an appeal; or
- (c) remit a case to the Regulator.

(2) The reasons must be given to the Regulator and to the person bringing the appeal.

(3) The Appeal Officer must make such arrangements for the publication of the decisions listed in paragraph (1) and his reasons for them as he considers appropriate.

30th June 2005

*Alun Michael*  
Minister for Industry and the Regions  
Department of Trade and Industry

## SCHEDULE 1

Regulation 7

PROVISIONS PRESCRIBED FOR THE MEMORANDUM  
OR ARTICLES OF A COMMUNITY INTEREST COMPANY  
LIMITED BY GUARANTEE WITHOUT A SHARE CAPITAL

- 1.—(1) The company shall not transfer any of its assets other than for full consideration.
- (2) Provided the conditions in sub-paragraph (3) are satisfied, sub-paragraph (1) shall not apply to—
- (a) the transfer of assets to any specified asset-locked body, or (with the consent of the Regulator) to any other asset-locked body; and
  - (b) the transfer of assets made for the benefit of the community other than by way of a transfer of assets to an asset-locked body.
- (3) The conditions are that the transfer of assets must comply with any restrictions on the transfer of assets for less than full consideration which may be set out elsewhere in the memorandum or articles of the company.
- (4) In this paragraph—
- (a) “asset-locked body” means—
    - (i) a community interest company, charity or Scottish charity; or
    - (ii) a body established outside the United Kingdom that is equivalent to any of those persons;
  - (b) “community” is to be construed in accordance with section 35(5) of the Companies (Audit, Investigations and Community Enterprise) Act 2004;
  - (c) “charity” (except in the phrase “Scottish charity”) has the meaning given by section 96(1) of the Charities Act 1993<sup>(22)</sup>;
  - (d) “the Regulator” means the Regulator of Community Interest Companies;
  - (e) “Scottish charity” has the meaning given by section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(23)</sup>;
  - (f) “specified” means specified in the memorandum or articles of association of the company for the purposes of this paragraph; and
  - (g) “transfer” includes every description of disposition, payment, release or distribution, and the creation or extinction of an estate or interest in, or a right over, any property.
- 2.—(1) The subscribers to the memorandum are the first members of the company.
- (2) Such other persons as are admitted to membership in accordance with the articles shall be members of the company.
- (3) No person shall be admitted a member of the company unless he is approved by the directors.
- (4) Every person who wishes to become a member shall deliver to the company an application for membership in such form (and containing such information) as the directors require and executed by him.
- (5) Membership is not transferable to anyone else.
- (6) Membership is terminated if:
- (a) the member dies or ceases to exist; or

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<sup>(22)</sup> 1993 c. 10.

<sup>(23)</sup> 1990 c. 40.

(b) otherwise in accordance with the articles.

3.—(1) A person who is not a member of the company shall not have any right to vote at a general meeting of the company; but this is without prejudice to any right to vote on a resolution affecting the rights attached to a class of the company's debentures.

(2) No powers to appoint directors of the company may be given to persons who are not members of the company which immediately after their exercise could result in the majority of the directors of the company having been appointed by persons who are not members of the company.

(3) No powers to remove directors of the company may be given to persons who are not members of the company which immediately after their exercise could result in either—

- (a) the majority of the remaining directors of the company having been appointed by persons who are not members of the company; or
- (b) the number of directors removed during the current financial year of the company by persons who are not members of the company exceeding the number of the remaining directors of the company.

(4) However, sub-paragraphs (2) and (3) shall not prevent a director from appointing, or subsequently removing, an alternate director, if permitted to do so by the articles.

(5) In this paragraph, "financial year" has the meaning given in section 223 of the Companies Act 1985(24).

4.—(1) Questions arising at a meeting of directors shall be decided by a majority of votes; in case of an equality of votes, the chairman shall have a second or casting vote.

(2) A director who is also an alternate director shall be entitled in the absence of his appointer to a separate vote on behalf of his appointer in addition to his own vote.

(3) Except as provided by sub-paragraphs (1) and (2) in all proceedings of directors each director must not have more than one vote.

## SCHEDULE 2

Regulation 8(a)

### PROVISIONS PRESCRIBED FOR THE MEMORANDUM OR ARTICLES OF A COMMUNITY INTEREST COMPANY LIMITED BY SHARES, OR LIMITED BY GUARANTEE WITH A SHARE CAPITAL

1.—(1) The company shall not transfer any of its assets other than for full consideration.

(2) Provided the conditions in sub-paragraph (3) are satisfied, sub-paragraph (1) shall not apply to—

- (a) the transfer of assets to any specified asset-locked body, or (with the consent of the Regulator) to any other asset-locked body; and
- (b) the transfer of assets made for the benefit of the community other than by way of a transfer of assets to an asset-locked body.

(3) The conditions are that the transfer of assets must comply with any restrictions on the transfer of assets for less than full consideration which may be set out elsewhere in the memorandum or articles of the company.

(4) In this paragraph—

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(24) Section 223 of the 1985 Act was inserted by section 3 of the Companies Act 1989.

- (a) “asset-locked body” means—
  - (i) a community interest company, charity or Scottish charity; or
  - (ii) a body established outside Great Britain that is equivalent to any of those persons;
- (b) “community” is to be construed in accordance with section 35(5) of the Companies (Audit, Investigations and Community Enterprise) Act 2004;
- (c) “charity” (except in the phrase “Scottish charity”) has the meaning given by section 96 of the Charities Act 1993;
- (d) “the Regulator” means the Regulator of Community Interest Companies;
- (e) “Scottish charity” has the meaning given by section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;
- (f) “specified” means specified in the memorandum or articles of association of the company for the purposes of this paragraph; and
- (g) “transfer” includes every description of disposition, payment, release or distribution, and the creation or extinction of an estate or interest in, or a right over, any property.

2.—(1) The directors may refuse to register the transfer of a share to a person of whom they do not approve.

(2) They may also refuse to register the transfer unless it is lodged at the registered office of the company or at such other place as the directors may appoint and is accompanied by such evidence as the directors may reasonably require to show the right of the transferor to make the transfer, and by such other information as they may reasonably require.

(3) If the directors refuse to register such a transfer, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

(4) The provisions of this paragraph apply in addition to any restrictions on the transfer of a share which may be set out elsewhere in the memorandum or articles of the company.

3.—(1) A person who is not a member of the company shall not have any right to vote at a general meeting of the company; but this is without prejudice to any right to vote on a resolution affecting the rights attached to a class of the company’s debentures.

(2) No powers to appoint directors of the company may be given to persons who are not members of the company which immediately after their exercise could result in the majority of the directors of the company having been appointed by persons who are not members of the company.

(3) No powers to remove directors of the company may be given to persons who are not members of the company which immediately after their exercise could result in either—

- (a) the majority of the remaining directors of the company having been appointed by persons who are not members of the company; or
- (b) the number of directors removed during the current financial year of the company by persons who are not members of the company exceeding the number of the remaining directors of the company.

(4) However, sub-paragraphs (2) and (3) shall not prevent a director from appointing, or subsequently removing, an alternate director, if permitted to do so by the articles.

(5) In this paragraph, “financial year” has the meaning given in section 223 of the Companies Act 1985.

4.—(1) Questions arising at a meeting of directors shall be decided by a majority of votes; in case of an equality of votes, the chairman shall have a second or casting vote.

(2) A director who is also an alternate director shall be entitled in the absence of his appointer to a separate vote on behalf of his appointer in addition to his own vote.

(3) Except as provided by sub-paragraphs (1) and (2) in all proceedings of directors each director must not have more than one vote.

### SCHEDULE 3

Regulation 8(b)

#### ALTERNATIVE PROVISIONS PRESCRIBED FOR THE MEMORANDUM OR ARTICLES OF A COMMUNITY INTEREST COMPANY LIMITED BY SHARES, OR LIMITED BY GUARANTEE WITH A SHARE CAPITAL

1.—(1) The company shall not transfer any of its assets other than for full consideration.

(2) Provided the conditions in sub-paragraph (3) are satisfied, sub-paragraph (1) shall not apply to—

- (a) the transfer of assets to any specified asset-locked body, or (with the consent of the Regulator) to any other asset-locked body;
- (b) the transfer of assets made for the benefit of the community other than by way of a transfer of assets to an asset-locked body;
- (c) the payment of dividends in respect of shares in the company;
- (d) the distribution of assets on a winding up;
- (e) payments on the redemption or purchase of the company's own shares;
- (f) payments on the reduction of share capital; and
- (g) the extinguishing or reduction of the liability of members in respect of share capital not paid up on the reduction of share capital.

(3) The conditions are that the transfer of assets—

- (a) must comply with any restrictions on the transfer of assets for less than full consideration which may be set out elsewhere in the memorandum or articles of the company; and
- (b) must not exceed any limits imposed by, or by virtue of, Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.

(4) In this paragraph—

- (a) “asset-locked body” means—
  - (i) a community interest company, charity or Scottish charity; or
  - (ii) a body established outside Great Britain that is equivalent to any of those persons;
- (b) “community” is to be construed in accordance with section 35(5) of the Companies (Audit, Investigations and Community Enterprise) Act 2004;
- (c) “charity” (except in the phrase “Scottish charity”) has the meaning given by section 96 of the Charities Act 1993;
- (d) “the Regulator” means the Regulator of Community Interest Companies;
- (e) “Scottish charity” has the meaning given by section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;
- (f) “specified” means specified in the memorandum or articles of association of the company for the purposes of this paragraph; and

- (g) “transfer” includes every description of disposition, payment, release or distribution, and the creation or extinction of an estate or interest in, or a right over, any property.

2.—(1) The directors may refuse to register the transfer of a share to a person of whom they do not approve.

(2) They may also refuse to register the transfer unless it is lodged at the registered office of the company or at such other place as the directors may appoint and is accompanied by such evidence as the directors may reasonably require to show the right of the transferor to make the transfer, and by such other information as they may reasonably require.

(3) If the directors refuse to register such a transfer, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

(4) The provisions of this paragraph apply in addition to any restrictions on the transfer of a share which may be set out elsewhere in the memorandum or articles of the company.

3.—(1) A person who is not a member of the company shall not have any right to vote at a general meeting of the company; but this is without prejudice to any right to vote on a resolution affecting the rights attached to a class of the company’s debentures.

(2) No powers to appoint directors of the company may be given to persons who are not members of the company which immediately after their exercise could result in the majority of the directors of the company having been appointed by persons who are not members of the company.

(3) No powers to remove directors of the company may be given to persons who are not members of the company which immediately after their exercise could result in either—

- (a) the majority of the remaining directors of the company having been appointed by persons who are not members of the company; or
- (b) the number of directors removed during the current financial year of the company by persons who are not members of the company exceeding the number of the remaining directors of the company.

(4) However, sub-paragraphs (2) and (3) shall not prevent a director from appointing, or subsequently removing, an alternate director, if permitted to do so by the articles.

(5) In this paragraph “financial year” has the meaning given in section 223 of the Companies Act 1985.

4.—(1) Questions arising at a meeting of directors shall be decided by a majority of votes; in case of an equality of votes, the chairman shall have a second or casting vote.

(2) A director who is also an alternate director shall be entitled in the absence of his appointer to a separate vote on behalf of his appointer in addition to his own vote.

(3) Except as provided by sub-paragraphs (1) and (2) in all proceedings of directors each director must not have more than one vote.

#### SCHEDULE 4

Regulation 22(7)

#### CALCULATION OF THE AVERAGE DEBT OR SUM OUTSTANDING UNDER A DEBENTURE DURING A 12 MONTH PERIOD

1.—(1) The average amount of a debt or sum outstanding under a debenture during any 12 month period is the amount which satisfies the calculation set out in sub-paragraph (2).

(2) The calculation referred to in sub-paragraph (1) is A divided by B where:

A is the aggregate of the amount of the debt or the sum outstanding under the debenture as at the end of each day during the 12 month period; and

B is the number of days during that 12 month period.

(3) For the purposes of A in sub-paragraph (2) there shall be excluded any sums which represent interest which has accrued on that debt or debenture within that 12 month period.

(4) For the purposes of A in sub-paragraph (2) where the debt or debenture did not exist at the end of any day during the 12 month period, the amount of the debt or the sum outstanding under the debenture as at the end of that day shall be treated as being zero for the purposes of the calculation in A.

2. Where the amount of the debt or the sum outstanding under the debenture is not known as at the end of any particular date, the directors of the community interest company may, for the purposes of the calculation referred to in paragraph 1, substitute for the debt or the sum outstanding under the debenture such amount or sum as they estimate to be the amount of the debt or the sum outstanding under the debenture as at the end of that particular date.

## SCHEDULE 5

Regulation 36

### FEES PAYABLE TO THE REGISTRAR OF COMPANIES

<i>Matter in relation to which fee is payable</i>	<i>Amount of fee</i>	<i>When payable</i>
Decision under section 36(4) of the 2004 Act as to whether a company is eligible to be formed as a community interest company	£15.00	On delivery to the registrar under section 10 of the 1985 Act, section 36 of the 2004 Act and regulation 11 of the documents constituting an application to form a community interest company
Decision under section 38(3) of the 2004 Act as to whether a company is eligible to become a community interest company	£15.00	On delivery to the registrar under section 380 of the 1985 Act, section 37 of the 2004 Act and regulation 12 of the documents constituting an application to the registrar to become a community interest company
Consideration of a community interest company report forwarded by the registrar under section 34(4) of the 2004 Act	£15.00	On delivery of the report to the registrar

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## 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.

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](mailto: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.