
STATUTORY INSTRUMENTS

2009 No. 1632

COMPANIES

The Companies (Shareholders' Rights) Regulations 2009

<i>Made</i>	- - - -	<i>2nd July 2009</i>
<i>Laid before Parliament</i>		<i>3rd July 2009</i>
<i>Coming into force</i>	- -	<i>3rd August 2009</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation⁽²⁾.

In exercise of the powers conferred by section 2(2) of that Act, the Secretary of State makes the following Regulations.

PART 1

INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Companies (Shareholders' Rights) Regulations 2009.

(2) They come into force on 3rd August 2009 and apply in relation to meetings of which notice is given, or first given, on or after that date.

PART 2

AMENDMENTS OF GENERAL APPLICATION

Voting on show of hands

2.—(1) In section 282(3) of the Companies Act 2006⁽³⁾ (ordinary resolutions: majority required on show of hands), for the words from “a simple majority of” to the end substitute “a simple majority of the votes cast by those entitled to vote”.

(1) 1972 c.68.
(2) S.I. 2007/193.
(3) 2006 c.46.

(2) In section 283(4) of that Act (special resolutions: majority required on show of hands), for the words from “not less than 75% of” to the end substitute “not less than 75% of the votes cast by those entitled to vote”.

(3) In section 284 of that Act (votes: general rules), for subsection (2) substitute—

“(2) On a vote on a resolution on a show of hands at a meeting, each member present in person has one vote.”.

(4) After subsection (4) of that section add—

“(5) Nothing in this section is to be read as restricting the effect of—
section 152 (exercise of rights by nominees),
section 285 (voting by proxy),
section 322 (exercise of voting rights on poll),
section 322A (voting on a poll: votes cast in advance), or
section 323 (representation of corporations at meetings).”.

Voting by proxy

3. For section 285 of the Companies Act 2006 (voting: specific requirements) substitute—

“Voting by proxy

285.—(1) On a vote on a resolution on a show of hands at a meeting, every proxy present who has been duly appointed by one or more members entitled to vote on the resolution has one vote.

This is subject to subsection (2).

(2) On a vote on a resolution on a show of hands at a meeting, a proxy has one vote for and one vote against the resolution if—

- (a) the proxy has been duly appointed by more than one member entitled to vote on the resolution, and
- (b) the proxy has been instructed by one or more of those members to vote for the resolution and by one or more other of those members to vote against it.

(3) On a poll taken at a meeting of a company all or any of the voting rights of a member may be exercised by one or more duly appointed proxies.

(4) Where a member appoints more than one proxy, subsection (3) does not authorise the exercise by the proxies taken together of more extensive voting rights than could be exercised by the member in person.

(5) Subsections (1) and (2) have effect subject to any provision of the company’s articles.

Voting rights on poll or written resolution

285A. In relation to a resolution required or authorised by an enactment, if a private company’s articles provide that a member has a different number of votes in relation to a resolution when it is passed as a written resolution and when it is passed on a poll taken at a meeting—

- (a) the provision about how many votes a member has in relation to the resolution passed on a poll is void, and
- (b) a member has the same number of votes in relation to the resolution when it is passed on a poll as the member has when it is passed as a written resolution.”.

Members' power to require directors to call general meetings

4.—(1) Section 303 of the Companies Act 2006 (members' power to require directors to call general meeting) is amended as follows.

- (2) In subsection (2)(a) and (b), for "the required percentage" substitute "5%".
- (3) Omit subsection (3).

Advance voting on a poll

5.—(1) After section 322 of the Companies Act 2006 insert—

"Voting on a poll: votes cast in advance

322A.—(1) A company's articles may contain provision to the effect that on a vote on a resolution on a poll taken at a meeting, the votes may include votes cast in advance.

(2) In the case of a traded company any such provision in relation to voting at a general meeting may be made subject only to such requirements and restrictions as are—

- (a) necessary to ensure the identification of the person voting, and
- (b) proportionate to the achievement of that objective.

Nothing in this subsection affects any power of a company to require reasonable evidence of the entitlement of any person who is not a member to vote.

(3) Any provision of a company's articles is void in so far as it would have the effect of requiring any document casting a vote in advance to be received by the company or another person earlier than the following time—

- (a) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;
- (b) in the case of any other poll, 48 hours before the time for holding the meeting or adjourned meeting.

(4) In calculating the periods mentioned in subsection (3), no account is to be taken of any part of a day that is not a working day."

(2) In section 282(4) and section 283(5) of that Act (passing of ordinary or special resolution on a poll), for "in person or by proxy" substitute "in person, by proxy or in advance (see section 322A)".

Representation of corporations at meetings

6. In section 323 of the Companies Act 2006 (representation of corporations at meetings), for subsections (2) to (4) substitute—

"(2) A person authorised by a corporation is entitled to exercise (on behalf of the corporation) the same powers as the corporation could exercise if it were an individual member of the company.

Where a corporation authorises more than one person, this subsection is subject to subsections (3) and (4).

(3) On a vote on a resolution on a show of hands at a meeting of the company, each authorised person has the same voting rights as the corporation would be entitled to.

(4) Where subsection (3) does not apply and more than one authorised person purport to exercise a power under subsection (2) in respect of the same shares—

- (a) if they purport to exercise the power in the same way as each other, the power is treated as exercised in that way;

- (b) if they do not purport to exercise the power in the same way as each other, the power is treated as not exercised.”.

Obligations of proxies

7. After section 324 of the Companies Act 2006 insert—

“Obligation of proxy to vote in accordance with instructions

324A. A proxy must vote in accordance with any instructions given by the member by whom the proxy is appointed.”.

Electronic meetings and voting

8. After section 360 of the Companies Act 2006 insert—

“Electronic meetings and voting

360A.—(1) Nothing in this Part is to be taken to preclude the holding and conducting of a meeting in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it.

(2) In the case of a traded company the use of electronic means for the purpose of enabling members to participate in a general meeting may be made subject only to such requirements and restrictions as are—

- (a) necessary to ensure the identification of those taking part and the security of the electronic communication, and
- (b) proportionate to the achievement of those objectives.

(3) Nothing in subsection (2) affects any power of a company to require reasonable evidence of the entitlement of any person who is not a member to participate in the meeting.”.

PART 3

AMENDMENTS RELATING TO TRADED COMPANIES

Traded companies: notice of general meetings

9.—(1) In section 307 of the Companies Act 2006 (notice required of a general meeting), before subsection (1) insert—

“(A1) This section applies to—

- (a) a general meeting of a company that is not a traded company; and
- (b) a general meeting of a traded company that is an opted-in company (as defined by section 971(1)), where—
 - (i) the meeting is held to decide whether to take any action that might result in the frustration of a takeover bid for the company; or
 - (ii) the meeting is held by virtue of section 969 (power of offeror to require general meeting to be held).

(A2) For corresponding provision(s) in relation to general meetings of traded companies (other than meetings within subsection (A1)(b)), see section 307A.”.

(2) After that section insert—

“Notice required of general meeting: certain meetings of traded companies

307A.—(1) A general meeting of a traded company must be called by notice of—

- (a) in a case where conditions A to C (set out below) are met, at least 14 days;
- (b) in any other case, at least 21 days.

(2) Condition A is that the general meeting is not an annual general meeting.

(3) Condition B is that the company offers the facility for members to vote by electronic means accessible to all members who hold shares that carry rights to vote at general meetings. This condition is met if there is a facility, offered by the company and accessible to all such members, to appoint a proxy by means of a website.

(4) Condition C is that a special resolution reducing the period of notice to not less than 14 days has been passed—

- (a) at the immediately preceding annual general meeting, or
- (b) at a general meeting held since that annual general meeting.

(5) In the case of a company which has not yet held an annual general meeting, condition C is that a special resolution reducing the period of notice to not less than 14 days has been passed at a general meeting.

(6) The company’s articles may require a longer period of notice than that specified in subsection (1).

(7) Where a general meeting is adjourned, the adjourned meeting may be called by shorter notice than required by subsection (1).

But in the case of an adjournment for lack of a quorum this subsection applies only if—

- (a) no business is to be dealt with at the adjourned meeting the general nature of which was not stated in the notice of the original meeting, and
- (b) the adjourned meeting is to be held at least 10 days after the original meeting.

(8) Nothing in this section applies in relation to a general meeting of a kind mentioned in section 307(A1)(b) (certain meetings regarding takeover of opted-in company).”.

(3) In section 360(1) of the Companies Act 2006 (computation of periods of notice etc: clear day rule), after the entry relating to section 307(1) and (2) of that Act, insert—

“section 307A(1), (4), (5) and (7)(b) (notice required of general meeting of traded company),

Traded companies: contents of notice of meeting

10.—(1) Section 311 of the Companies Act 2006 (contents of notices of meetings) is amended as follows.

(2) In subsection (2) (notice to state general nature of business to be dealt with), for the second sentence substitute “In relation to a company other than a traded company, this subsection has effect subject to any provision of the company’s articles.”.

(3) After that subsection insert—

“(3) Notice of a general meeting of a traded company must also include—

- (a) a statement giving the address of the website on which the information required by section 311A (traded companies: publication of information in advance of general meeting) is published;
- (b) a statement—

- (i) that the right to vote at the meeting is determined by reference to the register of members, and
- (ii) of the time when that right will be determined in accordance with section 360B(2) (traded companies: share dealings before general meetings);
- (c) a statement of the procedures with which members must comply in order to be able to attend and vote at the meeting (including the date by which they must comply);
- (d) a statement giving details of any forms to be used for the appointment of a proxy;
- (e) where the company offers the facility for members to vote in advance (see section 322A) or by electronic means (see section 360A), a statement of the procedure for doing so (including the date by which it must be done, and details of any forms to be used); and
- (f) a statement of the right of members to ask questions in accordance with section 319A (traded companies: questions at meetings).”.

Traded companies: publication of information in advance of general meeting

11. After section 311 of the Companies Act 2006 insert—

“Traded companies: publication of information in advance of general meeting

311A.—(1) A traded company must ensure that the following information relating to a general meeting of the company is made available on a website—

- (a) the matters set out in the notice of the meeting;
 - (b) the total numbers of—
 - (i) shares in the company, and
 - (ii) shares of each class,in respect of which members are entitled to exercise voting rights at the meeting;
 - (c) the totals of the voting rights that members are entitled to exercise at the meeting in respect of the shares of each class;
 - (d) members’ statements, members’ resolutions and members’ matters of business received by the company after the first date on which notice of the meeting is given.
- (2) The information must be made available on a website that—
- (a) is maintained by or on behalf of the company, and
 - (b) identifies the company.
- (3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on payment of a fee or otherwise restricted.
- (4) The information—
- (a) must be made available—
 - (i) in the case of information required by subsection (1)(a) to (c), on or before the first date on which notice of the meeting is given, and
 - (ii) in the case of information required by subsection (1)(d), as soon as reasonably practicable, and

- (b) must be kept available throughout the period of two years beginning with the date on which it is first made available on a website in accordance with this section.
- (5) A failure to make information available throughout the period specified in subsection (4)(b) is disregarded if—
 - (a) the information is made available on the website for part of that period, and
 - (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.
- (6) The amounts mentioned in subsection (1)(b) and (c) must be ascertained at the latest practicable time before the first date on which notice of the meeting is given.
- (7) Failure to comply with this section does not affect the validity of the meeting or of anything done at the meeting.
- (8) If this section is not complied with as respects any meeting, an offence is committed by every officer of the company who is in default.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

Traded companies: questions at meetings

12.—(1) After section 319 of the Companies Act 2006 insert—

“Traded companies: questions at meetings

319A.—(1) At a general meeting of a traded company, the company must cause to be answered any question relating to the business being dealt with at the meeting put by a member attending the meeting.

- (2) No such answer need be given—
 - (a) if to do so would—
 - (i) interfere unduly with the preparation for the meeting, or
 - (ii) involve the disclosure of confidential information;
 - (b) if the answer has already been given on a website in the form of an answer to a question; or
 - (c) if it is undesirable in the interests of the company or the good order of the meeting that the question be answered.”.

(2) In section 145(3) of the Companies Act 2006 (effect of provision of articles as to enjoyment or exercise of members’ rights), after paragraph (e) insert—

“(ea) section 319A (right to ask question at meeting of traded company);”.

Traded companies: appointment of proxy and termination of proxy’s authority

13.—(1) In section 327 of the Companies Act 2006 (notice required of appointment of proxy etc), before subsection (1) insert —

- “(A1) In the case of a traded company —
 - (a) the appointment of a person as proxy for a member must be notified to the company in writing;
 - (b) where such an appointment is made, the company may require reasonable evidence of—
 - (i) the identity of the member and of the proxy,

- (ii) the member’s instructions (if any) as to how the proxy is to vote, and
 - (iii) where the proxy is appointed by a person acting on behalf of the member, authority of that person to make the appointment;
- but may not require to be provided with anything else relating to the appointment.
- (2) In subsection (1) of that section, for “This section applies to” substitute “The following provisions apply in the case of traded companies and other companies as regards”.
- (3) In section 330 of that Act (notice required of termination of proxy’s authority) —
- (a) before subsection (1) insert—
 - “(A1) In the case of a traded company the termination of the authority of a person to act as proxy must be notified to the company in writing.”;
 - (b) in subsection (1) for “This section applies to” substitute “The following provisions apply in the case of traded companies and other companies as regards”.
- (4) After section 333 of that Act insert—

“Traded company: duty to provide electronic address for receipt of proxies etc

- 333A.**—(1) A traded company must provide an electronic address for the receipt of any document or information relating to proxies for a general meeting.
- (2) The company must provide the address either—
- (a) by giving it when sending out an instrument of proxy for the purposes of the meeting or issuing an invitation to appoint a proxy for those purposes; or
 - (b) by ensuring that it is made available, throughout the period beginning with the first date on which notice of the meeting is given and ending with the conclusion of the meeting, on the website on which the information required by section 311A(1) is made available.
- (3) The company is deemed to have agreed that any document or information relating to proxies for the meeting may be sent by electronic means to the address provided (subject to any limitations specified by the company when providing the address).
- (4) In this section—
- (a) documents relating to proxies include—
 - (i) the appointment of a proxy for a meeting,
 - (ii) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, and
 - (iii) notice of the termination of the authority of a proxy;
 - (b) “electronic address” has the meaning given by section 333(4).”.

Traded companies: class meetings

- 14.**—(1) Section 334 of the Companies Act 2006 (application of provisions as to resolutions at general meetings in relation to class meetings) is amended as follows.
- (2) In subsection (1), for “(2) and (3)” substitute “(2) to (3)”.
- (3) In subsection (2)—
- (a) omit the “and” at the end of paragraph (a);
 - (b) after paragraph (b) insert—
 - “, and

(c) sections 311(3), 311A, 319A, 327(A1), 330(A1) and 333A (additional requirements relating to traded companies).”.

(4) After subsection (2) insert—

“(2A) Section 307(1) to (6) apply in relation to a meeting of holders of a class of shares in a traded company as they apply in relation to a meeting of holders of a class of shares in a company other than a traded company (and, accordingly, section 307A does not apply in relation to such a meeting).”.

Traded companies: duty to hold AGM

15.—(1) Section 336 of the Companies Act 2006 (public companies: annual general meeting) is amended as follows.

(2) After subsection (1) insert—

“(1A) Every private company that is a traded company must hold a general meeting as its annual general meeting in each period of 9 months beginning with the day following its accounting reference date (in addition to any other meetings held during that period).”.

(3) In subsections (2) and (3), after “subsection (1)” in each place in which it occurs insert “or (1A)”.

(4) In the section heading, after “Public companies” insert “and traded companies”.

(5) In the heading to Chapter 4 of Part 13 of the Companies Act 2006 (public companies: additional requirements for AGMs), after “PUBLIC COMPANIES” insert “AND TRADED COMPANIES”.

Traded companies: notice of AGM

16.—(1) Section 337 of the Companies Act 2006 (public companies: notice of AGM) is amended as follows.

(2) In subsection (1) (notice to state that meeting is AGM), after “public company” insert “or a private company that is a traded company”.

(3) In subsection (2), after “annual general meeting” insert “of a public company that is not a traded company”.

(4) After that subsection insert—

“(3) Where a notice calling an annual general meeting of a traded company is given more than 6 weeks before the meeting, the notice must include—

- (a) if the company is a public company, a statement of the right under section 338 to require the company to give notice of a resolution to be moved at the meeting, and
- (b) whether or not the company is a public company, a statement of the right under section 338A to require the company to include a matter in the business to be dealt with at the meeting.”.

(5) In the section heading, after “Public companies” insert “and traded companies”.

(6) In section 360 of the Companies Act 2006 (computation of periods of notice etc: clear day rule), after the entry relating to section 316(2)(b), insert—

“section 337(3) (contents of notice of AGM of traded company),”.

Traded companies: members’ power to include other matters in business dealt with at AGM

17.—(1) After section 338 of the Companies Act 2006 insert—

“Traded companies: members’ power to include other matters in business dealt with at AGM

338A.—(1) The members of a traded company may request the company to include in the business to be dealt with at an annual general meeting any matter (other than a proposed resolution) which may properly be included in the business.

(2) A matter may properly be included in the business at an annual general meeting unless –

- (a) it is defamatory of any person, or
- (b) it is frivolous or vexatious.

(3) A company is required to include such a matter once it has received requests that it do so from—

- (a) members representing at least 5% of the total voting rights of all the members who have a right to vote at the meeting, or
- (b) at least 100 members who have a right to vote at the meeting and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.

See also section 153 (exercise of rights where shares held on behalf of others).

(4) A request—

- (a) may be in hard copy form or in electronic form,
- (b) must identify the matter to be included in the business,
- (c) must be accompanied by a statement setting out the grounds for the request, and
- (d) must be authenticated by the person or persons making it.

(5) A request must be received by the company not later than—

- (a) 6 weeks before the meeting, or
- (b) if later, the time at which notice is given of the meeting.”.

(2) In section 145(3) of the Companies Act 2006 (effect of provision of articles as to enjoyment or exercise of members’ rights), after paragraph (g) insert—

“(ga) section 338A (traded companies: members’ power to include matters in business dealt with at AGM);”.

(3) In section 153(1) of the Companies Act 2006 (exercise of rights where shares held on behalf of others: members’ requests), after paragraph (b) insert—

“(ba) section 338A (traded companies: members’ power to include matters in business dealt with at AGM);”.

(4) In section 360(1) of the Companies Act 2006 (computation of periods of notice etc: clear day rule), after the entry relating to section 338(4)(d)(i) insert—

“section 338A(5) (request to include matter in the business to be dealt with at AGM of traded company);”.

Traded companies: company’s duty to circulate members’ matters for AGM

18.—(1) After section 340 of the Companies Act 2006 insert—

“Traded companies: duty to circulate members’ matters for AGM

340A.—(1) A company that is required under section 338A to include any matter in the business to be dealt with at an annual general meeting must—

- (a) give notice of it to each member of the company entitled to receive notice of the annual general meeting—
 - (i) in the same manner as notice of the meeting, and
 - (ii) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting, and
 - (b) publish it on the same website as that on which the company published the information required by section 311A.
- (2) Subsection (1) has effect subject to section 340B(2) (deposit or tender of sum in respect of expenses of circulation).
- (3) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Traded companies: expenses of circulating members' matters to be dealt with at AGM

340B.—(1) The expenses of the company in complying with section 340A need not be paid by the members who requested the inclusion of the matter in the business to be dealt with at the annual general meeting if requests sufficient to require the company to include the matter are received before the end of the financial year preceding the meeting.

- (2) Otherwise—
- (a) the expenses of the company in complying with that section must be paid by the members who requested the inclusion of the matter unless the company resolves otherwise, and
 - (b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than—
 - (i) six weeks before the annual general meeting to which the requests relate, or
 - (ii) if later, the time at which notice is given of that meeting,a sum reasonably sufficient to meet its expenses in complying with that section.”.

(2) In section 360(1) of the Companies Act 2006 (computation of periods of notice etc: clear day rule), omit the “and” before the entry relating to section 340(2)(b)(i) and after that entry insert—
“, and
section 340B(2)(b) (traded companies: duty to circulate members' matters for AGM).”.

Traded companies: website publication of poll results

19.—(1) Section 341 of the Companies Act 2006 (quoted companies: results of polls to be made available on website) is amended as follows.

- (2) In subsection (1), after “quoted company” insert “that is not a traded company”.
- (3) After subsection (1) insert—
- “(1A) Where a poll is taken at a general meeting of a traded company, the company must ensure that the following information is made available on a website—
- (a) the date of the meeting,
 - (b) the text of the resolution or, as the case may be, a description of the subject matter of the poll,

- (c) the number of votes validly cast,
 - (d) the proportion of the company's issued share capital (determined at the time at which the right to vote is determined under section 360B(2)) represented by those votes,
 - (e) the number of votes cast in favour,
 - (f) the number of votes cast against, and
 - (g) the number of abstentions (if counted).
- (1B) A traded company must comply with subsection (1A) by—
- (a) the end of 16 days beginning with the day of the meeting, or
 - (b) if later, the end of the first working day after the day on which the result of the poll is declared.”.
- (4) In section 352 of that Act (application of provisions to class meetings), for subsection (1) substitute—
- “(1) The provisions of section 341 (results of poll to be made available on website) apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company or traded company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.
- (1A) The provisions of section 342 to 351 (independent report on poll) apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.”.
- (5) In the heading for Chapter 5 of Part 13, after “QUOTED COMPANIES” insert “AND TRADED COMPANIES”.

Traded companies: share dealings before general meetings

20. After section 360A of the Companies Act 2006 insert—

“Traded companies: requirements for participating in and voting at general meetings

360B.—(1) Any provision of a traded company's articles is void in so far as it would have the effect of—

- (a) imposing a restriction on a right of a member to participate in and vote at a general meeting of the company unless the member's shares have (after having been acquired by the member and before the meeting) been deposited with, or transferred to, or registered in the name of another person, or
- (b) imposing a restriction on the right of a member to transfer shares in the company during the period of 48 hours before the time for the holding of a general meeting of the company if that right would not otherwise be subject to that restriction.

(2) A traded company must determine the right to vote at a general meeting of the company by reference to the register of members as at a time (determined by the company) that is not more than 48 hours before the time for the holding of the meeting.

(3) In calculating the period mentioned in subsection (1)(b) or (2), no account is to be taken of any part of a day that is not a working day.

(4) Nothing in this section affects—

- (a) the operation of—

- (i) Part 22 of this Act (information about interests in a company's shares),
 - (ii) Part 15 of the Companies Act 1985⁽⁴⁾ (orders imposing restrictions on shares), or
 - (iii) any provision in a company's articles relating to the application of any provision of either of those Parts; or
- (b) the validity of articles prescribed, or to the same effect as articles prescribed, under section 19 of this Act (power of Secretary of State to prescribe model articles).".

Meaning of "traded company"

21.—(1) After section 360B of the Companies Act 2006 insert—

"Meaning of "traded company"

360C. In this Part, "traded company" means a company any shares of which—

- (a) carry rights to vote at general meetings, and
- (b) are admitted to trading on a regulated market in an EEA State by or with the consent of the company."

(2) In Schedule 8 to the Companies Act 2006 (index of defined expressions), at the appropriate place, insert—

"traded company (in Part 13) | section 360C".

Traded companies: disapplication of saving for casting votes

22. In paragraph 23A of Schedule 3 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007⁽⁵⁾ (saving for provisions of a company's articles giving the chairman a second or casting vote in the event of an equality of votes on an ordinary resolution), at the end insert—

"(4) Nothing in this paragraph applies in relation to a traded company (as defined by section 360C of the Companies Act 2006)."

Transitional provisions

23. In section 307A(4) and (5) of the Companies Act 2006, references to annual general meetings and general meetings include ones held before 3 August 2009.

2nd July 2009

Ian Lucas
Minister for Business and Regulatory Reform,
Department for Business, Innovation and Skills

(4) 1985 c. 6.

(5) S.I. 2007/2194 (C. 84); paragraph 23A of Schedule 3 was inserted by S.I. 2007/3495 (C. 150), Schedule 5, paragraph 2(5).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17) so far as it is not already given effect in United Kingdom law. Except in one respect (regulation 22), they do so by amendment of Part 13 (Resolutions and Meetings) of the Companies Act 2006. This Note does not indicate where in United Kingdom law the Directive is already given effect.

Regulation 2 enables Articles 10 (proxy voting) and 13.4 (split votes by nominee shareholders) to be implemented by clarifying the relationship between the general voting rules in sections 282 to 284 and the rules about nominee shareholders, proxies, split votes and corporate representatives in sections 152, 285, 322, 322A and 323.

Regulation 3 implements Article 10.1 (shareholders' rights are the same whether exercised in person or by proxy) and 10.5 (proxies for more than one shareholder may split their votes) by replacing existing section 285 with two new sections, 285 and 285A (section 285A restates existing section 285(3) without any change).

Regulation 4 implements Article 6.2 (minimum stake to require a meeting to be called must not exceed 5%) by providing a single percentage, 5%, of the members of any type of company who may require the directors to call a general meeting.

Regulation 5 implements Article 12 (voting by correspondence) by providing for votes to be cast in advance.

Regulation 6 implements Article 13.4 (split votes by nominee shareholders) by enabling corporate representatives to vote in different ways from one another in respect of different blocks of shares.

Regulation 7 implements Article 10.4 (proxies to vote in accordance with instructions).

Regulation 8 implements Article 8 (participation in general meetings by electronic means) by preventing anything in Part 13 of the Companies Act 2006 from being an obstacle to meetings being held electronically.

Regulation 9 implements Article 5.1 (period of notice for general meetings) by amending sections 307 and 360 and inserting a new section 307A. The changes from existing section 307 are that annual general meetings of private companies with traded shares require 21 days' notice, and that other general meetings of companies (public and private) with traded shares also require 21 days' notice unless electronic voting is available and a resolution reducing the period to not less than 14 days was passed at the previous AGM or at a general meeting held since then.

Regulations 10 and 11 implement Article 5.3 and 5.4 (contents of notices of, and website publication of advance information about, general meetings of companies with traded shares): and see also regulation 15 below.

Regulation 12 implements Article 9 (right to ask questions at general meetings).

Regulation 13 implements Article 11 (formalities for proxy holder appointment and notification).

Regulation 14 makes consequential provision in respect of class meetings.

Regulation 15 requires private companies with traded shares to hold AGMs. This implements the obligation to apply the provisions of the Directive about annual general meetings to such companies which arises from the scope of the Directive provided for in Article 1.1.

Regulation 16 implements Article 5.3(b)(i) (notice of rights under Article 6) in respect of annual general meetings by providing for notice to be given of the right to require a company with traded shares to circulate a resolution to be moved at its AGM or to include something on the AGM agenda.

Regulation 17 implements Article 6.1(a), 6.2 and 6.3 (right to put items other than resolutions on the agenda of a general meeting) in respect of annual general meetings.

Regulation 18 implements Article 6.4 (revised agenda to be circulated when right to put items other than resolutions on the agenda of a general meeting exercised) in respect of annual general meetings and ensures that there is no obstacle to enjoyment of Article 6 rights by placing on the company the cost of circulating resolutions for the annual general meeting of a company with traded shares.

Regulation 19 implements Article 14 (determination of voting results and publication on website).

Regulation 20 implements Article 7 (requirements for participation and voting at general meetings).

Regulation 21 defines a company with traded voting shares as a “traded company”, if the shares are admitted to trading by or with consent of the company.

Regulation 22 implements Article 4 (equal treatment of shareholders) by excluding traded companies from the operation of the provision in the amended Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 preserving articles in force before 1st October 2007 which provide for the chairman of a company general meeting to have a casting vote.

Regulation 23 makes transitional provisions.

A Transposition Note has been prepared which set out how Directive [2006/36/EC](#) is transposed into UK law by these Regulations. An Impact Assessment of the effect that the implementation of the Directive by these Regulations will have on the costs of business, charities and other voluntary bodies has also been prepared and is annexed to the Explanatory Memorandum for this instrument. These are available from the Company Law Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1, and electronically at www.bis.gov.uk. Copies have been placed in the libraries of both Houses of Parliament.