

EXPLANATORY MEMORANDUM TO
THE COMPANIES (SHAREHOLDERS' RIGHTS TO VOTING CONFIRMATIONS)
REGULATIONS 2020

2020 No. 717

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument implements certain provisions in order for the UK to complete the transposition of Chapter Ia of Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 (“the Directive”), which amended Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 (“the Original Directive”) on shareholder engagement and rights. These Directives are commonly known as the Shareholders’ Rights Directive.
- 2.2 The measures in Chapter Ia of the Directive are required to be implemented in UK law by 3 September 2020, as EU law continues to apply to and in the UK as a general rule during the transition period. Most of the requirements of Chapter Ia are already implemented in the current UK legal framework.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 The UK Government is responsible for the operation and regulation of business entities in England and Wales, and in Scotland. Previously the Northern Ireland administration has agreed that, while the operation and regulation of business entities remains a transferred matter within the legislative competence of the Northern Ireland Assembly, amendments to the Act should be made in the same terms for the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 Lord Callanan has made the following statement regarding Human Rights:

“In my view the provisions of the Companies (Shareholders’ Rights to Voting Confirmations) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The European Commission published the Original Directive on 11 July 2007. The Original Directive was transposed through the Companies (Shareholder Rights) Regulations 2009 (S.I. 2009/1632) (“the 2009 regulations”) and relates to the right to vote on resolutions at company meetings and the right to receive information from the company about its performance and management.
- 6.2 The Directive (EU) 2017/828, published on 17 May 2017, amended the Original Directive to encourage long-term shareholder engagement and to enhance transparency between companies and investors. At the conclusion of the negotiations of the Directive, the Department and the European Scrutiny Committee¹ were satisfied that the Chapter Ia measures in the Directive are “broadly consistent...with the UK’s existing framework” and so minimal legislative changes were required. Further explanation is provided in the “Policy Background” below.
- 6.3 The majority of the Directive relating to other disclosure measures had a transposition deadline of 10 June 2019, and was transposed by the Department for Business, Energy and Industrial Strategy² and other departments and agencies³.
- 6.4 Chapter Ia is about the identification of shareholders, transmission of information and facilitation of exercise of shareholder rights. It has a transposition deadline of 3 September 2020. This instrument implements certain provisions of Article 3c of Chapter Ia, to the extent that the other Chapter Ia requirements are not already covered in UK law.
- 6.5 Implementation of Chapter Ia is required as the transposition deadline of 3 September 2020 falls before the end of the transition period during which EU law continues to apply to and in the UK.

7. Policy background

What is being done and why?

- 7.1 The Directive is a minimum harmonisation directive, which introduces measures while maintaining a proportionate approach, allowing Member States to retain flexibility in some areas.
- 7.2 Chapter Ia of the Directive applies to the “shareholder” as recognised in UK law, being the member on the register of members. This definition of shareholder remains unchanged from the Original Directive, which provided that the shareholder is the “natural or legal person that is recognised as a shareholder under the applicable law”.

¹ <https://publications.parliament.uk/pa/cm201617/cmselect/cmeuleg/71-xxxi/7115.htm>

² Through the Companies (Directors’ Remuneration Policy and Directors’ Remuneration Report) Regulations 2019 (S.I. 2019/970), relating to the reporting of directors’ remuneration.

³ The Financial Conduct Authority made changes to the FCA Handbook relating to disclosures by life insurers, asset managers and UK companies with voting shares admitted to a regulated market including officially listed companies; HM Treasury through the Proxy Advisors (Shareholders’ Rights) Regulations 2019 (SI 2019/926), relating to disclosures by proxy advisors who provide voting services to shareholders; and the Department for Work and Pensions through the Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019 (SI 2019/982), relating to disclosures by pension schemes.

The 2009 regulations, which transposed the requirements of the Original Directive, recognised the member registered in the register of members as the legal shareholder.

- 7.3 The Companies Act 2006 (“the Act”) and the Uncertificated Securities Regulations 2001 (S.I. 2001/3755) (“the USR”) already provide a legal framework in the UK for the identification of shareholders (being the member registered on the register of members under the Act, and the issuer register of members under the USR). The Act also already enables the communication of information to the shareholders, to enable the shareholder to exercise rights such as the right to receive notice of meetings (section 310) and a copy of the company’s annual accounts and reports (section 423). The Act also allows shareholders to transmit information to the company related to the exercise of the rights flowing from their shares, for example, the shareholder’s appointment of a proxy (section 327) and to vote in advance of a general meeting (section 322A).
- 7.4 Most of the requirements contained in Chapter Ia of the Directive are already implemented in UK law. An intermediary is not engaged in the UK’s legal framework as a conduit between the company and its shareholders. The amendments made by this instrument implement those parts of article 3c of the Directive that are not already part of that existing legal framework, namely:
- requiring an electronic confirmation to be sent to the shareholder on receipt of an electronic vote (new section 360AA as inserted by regulation 4 of the instrument); and
 - providing information which enables a shareholder to confirm that their vote taken by a poll in a general meeting has been validly recorded and counted by the company to be provided on request by the shareholder (new section 360BA as inserted by regulation 5 of the instrument).
- 7.5 The requirements in relation to the electronic receipt will apply where the electronic vote is cast on or after 3 September 2020. The request for confirmation under new section 360BA may only be exercised in respect of a poll vote taken at a general meeting that took place on or after 3 September 2020.
- 7.6 In the UK, the definition of “traded company” is in section 360C of the Act and the provisions cover this type of company.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union.
- 9. Consolidation**
- 9.1 This is not a consolidation.
- 10. Consultation outcome**
- 10.1 There has not been formal consultation. In January 2020, the Government informed interested stakeholders of the transposition approach via a technical note. Further technical comments were sought by the Department for Business, Energy and Industrial Strategy (from share registrars, the Chartered Governance Institute and a small number of external legal professionals) in the preparation of this instrument.

11. Guidance

- 11.1 The Regulations are not accompanied by formal guidance.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the additional requirements to provide confirmations (including upon request) apply only to UK-registered traded companies, of which there are currently around 900, and as the additional measures are not extensive compared to current good market practice. In practice, implementation will be carried out by a small number of share registrars that act as agents for these traded companies. The UK's existing shareholder framework already implements most of the shareholder identification and information requirements contained in the Directive.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is, in the first instance, a requirement to notify the European Commission by 3 September 2020 of the implementation of the Directive requirements enacted through this instrument. A transposition table has been produced to note the implementation in UK legislation.
- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Callanan has made the following statement:
- “A statutory review clause is not included in the instrument since the additional requirements are not extensive and are considered to meet the Government's ‘de minimis’ regulatory impact criteria, meaning no impact assessment is required (in particular, because the impacts are below £5m, do not impact on small business and create no open-ended new powers in legislation); and also since the instrument implements EU requirements with limited scope for domestic flexibility.”

15. Contact

- 15.1 Joanna Wing at the Department for Business, Energy and Industrial Strategy. Telephone: 03000682877 or email: joanna.wing@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sanu de Lima, Deputy Director for Corporate Governance, Responsibility and Diversity, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.