

Transposition Note

Inserted Chapter Ia (Articles 3a-3f) of Directive 2017/828 of the European Parliament and of the Council of 17th May 2017 (“the Directive”), amending Directive 2007/36 (“the Original Directive”) as regards the encouragement of long-term shareholder engagement.

The below table has been prepared by the Department for Business, Energy and Industrial Strategy. It sets out the requirements of Chapter Ia of the Directive (Articles 3a-3f), relating to the identification of shareholders, transmission of information and facilitation of exercise of shareholder rights, and how each requirement is already implemented in the United Kingdom either by existing domestic law or by the insertion of new sections into the Companies Act 2006 by The Companies (Shareholders’ Rights to Voting Confirmations) Regulations 2020 (the “2020 Regulations”).

The other aspects of the Directive have been implemented by 10 June 2019 through the following statutory instruments and other measures:

- By the Department for Business, Energy and Industrial Strategy, through the Companies (Directors’ Remuneration Policy and Directors’ Remuneration Report) Regulations 2019 (S.I. 2019/970), relating to the reporting of directors’ remuneration;
- By the Financial Conduct Authority, which 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;
- By HM Treasury, through the Proxy Advisors (Shareholders’ Rights) Regulations 2019 (SI 2019/926), relating to disclosures by proxy advisors; and
- By 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 original Directive relating to certain basic rights of shareholders was implemented through the Companies (Shareholders’ Rights) Regulations 2009 (S.I. 2009/1632). The transposition table for the Original Directive, which was attached to the Explanatory Memorandum, is online [here](#).

The Secretary of State is responsible for implementation.

Directive requirement	Implementation
Scope	
The Directive applies to a company whose shares carry voting rights and are admitted to trading on a regulated market within the EEA.	Article 1 sets out the subject-matter and scope of the entire Directive. The Original Directive applied to the same companies as those to which the Directive applies. The scope of the Original Directive was given effect in the UK by inserting the definition of

	<p>“traded company” in section 360C of the Companies Act 2006.</p> <p>The 2020 Regulations will apply the new sections 360AA and 360BA to a “traded company” as defined in section 360C of the Companies Act 2006.</p> <p>Article 2 sets out the definitions that apply in the Directive. This sets out that “‘shareholder’ means the natural or legal person recognised as a shareholder under the applicable law”.</p>
Article 3a - Identification of shareholders	
<p>Paragraph 1: “Member States shall ensure that companies have the right to identify their shareholders. Member States may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights. Such a percentage shall not exceed 0.5 %.”</p> <p>Paragraph 2: “Member States shall ensure that, on the request of the company or of a third party nominated by the company, the intermediaries communicate without delay to the company the information regarding shareholder identity.”</p> <p>Paragraph 3: “Where there is more than one intermediary in a chain of intermediaries, Member States shall ensure that the request of the company, or of a third party nominated by the company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the company or to a third party nominated by the company without delay by the intermediary who holds the requested information. Member States shall ensure that the company is able to obtain information regarding shareholder identity from any intermediary in the chain that holds the information.</p> <p>Member States may provide for the company to be allowed to request the central securities</p>	<p>No action is necessary to give effect to Article 3a. In the UK the shareholder is the person registered as the member in the company’s register of members required to be held by a company under section 113 of the Companies Act 2006 for certificated shares.</p> <p>For companies with uncertificated shares there is an equivalent obligation under regulation 20 of the Uncertificated Securities Regulations 2001 (“USR”) where the company must keep an “issuer register of members” and a “record of uncertificated shares” being a record of entries in the “Operator register of members”.</p> <p>A company therefore, can already identify its shareholders from these registers and no action is necessary to give effect to paragraph 1.</p> <p>An intermediary is not engaged in the UK’s legal framework as a conduit between the company and its shareholders for the purposes of identifying the shareholder. This means that no action is necessary to give effect to paragraphs 2 to 6.</p>

depository or another intermediary or service provider to collect the information regarding shareholder identity, including from the intermediaries in the chain of intermediaries and to transmit the information to the company.

Member States may additionally provide that, at the request of the company, or of a third party nominated by the company, the intermediary is to communicate to the company without delay the details of the next intermediary in the chain of intermediaries.”

Paragraph 4: “The personal data of shareholders shall be processed pursuant to this Article in order to enable the company to identify its existing shareholders in order to communicate with them directly with the view to facilitating the exercise of shareholder rights and shareholder engagement with the company.

Without prejudice to any longer storage period laid down by any sector-specific Union legislative act, Member States shall ensure that companies and intermediaries do not store the personal data of shareholders transmitted to them in accordance with this Article for the purpose specified in this Article for longer than 12 months after they have become aware that the person concerned has ceased to be a shareholder.

Member States may provide by law for processing of the personal data of shareholders for other purposes.”

Paragraph 5: “Member States shall ensure that legal persons have the right of rectification of incomplete or inaccurate information regarding their shareholder identity.”

Paragraph 6: “Member States shall ensure that an intermediary that discloses information regarding shareholder identity in accordance with the rules laid down in this Article is not considered to be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or

administrative provision.”	
Article 3b - Transmission of information	
<p>Paragraph 1: “Member States shall ensure that the intermediaries are required to transmit the following information, without delay, from the company to the shareholder or to a third party nominated by the shareholder: (a) the information which the company is required to provide to the shareholder, to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or (b) where the information referred to in point (a) is available to shareholders on the website of the company, a notice indicating where on the website that information can be found.”</p> <p>Paragraph 2: “Member States shall require companies to provide intermediaries in a standardised and timely manner with the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph.</p> <p>Paragraph 3: “However, Member States shall not require that the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph be transmitted or provided in accordance with paragraphs 1 and 2 where companies send that information or that notice directly to all their shareholders or to a third party nominated by the shareholder.”</p> <p>Paragraph 4: “Member States shall oblige intermediaries to transmit, without delay, to the company, in accordance with the instructions received from the shareholders, the information received from the shareholders related to the exercise of the rights flowing from their shares.”</p> <p>Paragraph 5: “Where there is more than one intermediary in a chain of intermediaries, information referred to in paragraphs 1 and 4 shall be transmitted between intermediaries without delay, unless the information can be directly transmitted by the intermediary to the company or to the shareholder or to a third</p>	<p>No action is necessary to give effect to Article 3b.</p> <p>This article concerns the transmission of information between companies, intermediaries and shareholders regarding notice of information from the company to enable shareholders to exercise rights flowing from their shares.</p> <p>As outlined above, the company is already able to identify its shareholders and does not need to make a request through an intermediary for this purpose.</p> <p>The Companies Act 2006 requires companies to transmit the information it is required to provide to the shareholder, 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).</p> <p>The Companies Act 2006 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 vote in advance of a general meeting (section 322A).</p>

party nominated by the shareholder.”	
Article 3c - Facilitation of the exercise of shareholder rights	
Paragraph 1: “Member States shall ensure that the intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following: (a) the intermediary makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights; (b) the intermediary exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the shareholder’s benefit.”	Paragraph 1 does not require implementation. This paragraph is not engaged because the obligation is on intermediaries, not on the company. As outlined above in the UK legal framework the company has a direct link to its shareholder (the member on the register) and that shareholder already has those rights to participate and vote. Therefore, the role of the intermediary to facilitate the exercise of the shareholder rights is not engaged.
Paragraph 2, 1st subparagraph: “Member States shall ensure that when votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote.”	Regulation 4 inserts a new section into the Act, 360AA, to give effect to this subparagraph.
Paragraph 2, 2nd subparagraph: “Member States shall ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already available to them. Member States may establish a deadline for requesting such confirmation. Such a deadline shall not be longer than three months from the date of the vote.”	Regulation 5 inserts a new section into the Act, 360BA, to give effect to this subparagraph. The UK has established a deadline for the shareholder to request this information, which is 30 days from the date of the general meeting.
Paragraph 2, 3rd subparagraph: “Where the intermediary receives confirmation as referred to in the first or second subparagraph, it shall transmit it without delay to the shareholder or a third party nominated by the shareholder. Where there is more than one intermediary in the chain of intermediaries the confirmation shall be transmitted between intermediaries without delay, unless the confirmation can be directly transmitted to the shareholder or a third party nominated by the shareholder.”	This subparagraph does not require implementation. This paragraph is not engaged because the obligation is on intermediaries, not on the company, for the reason outlined above.
Paragraph 3: “The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to facilitate the exercise of shareholder rights	Paragraph 3 does not require implementation and the 2020 Regulations do not apply in the UK transposition as they concern the transmission of information in a chain of

laid down in paragraphs 1 and 2 of this Article as regards the types of the facilitation, the format of the electronic confirmation of receipt of the votes, the format for the transmission of the confirmation that the votes have been validly recorded and counted through the chain of intermediaries, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).”	intermediaries, and in the UK the company already has a direct link to its shareholder.
Article 3d - Non-discrimination, proportionality and transparency of costs	
<p>Paragraph 1: “Member States shall require intermediaries to disclose publicly any applicable charges for services provided for under this Chapter separately for each service.”</p> <p>Paragraph 2: “Member States shall ensure that any charges levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.”</p> <p>Paragraph 3: “Member States may prohibit intermediaries from charging fees for the services provided for under this Chapter.”</p>	<p>No action is necessary to give effect to Article 3d.</p> <p>An intermediary is not engaged in the UK legal framework for the purposes of Articles 3a to 3c.</p>
Article 3e - Third-country intermediaries	
“This Chapter also applies to intermediaries which have neither their registered office nor their head office in the Union when they provide services referred to in Article 1(5).”	<p>No action is necessary to give effect to Article 3e.</p> <p>An intermediary is not engaged in the UK legal framework for the purposes of Articles 3a to 3c.</p>
Article 3f - Information on implementation	
Paragraph 1: “Competent authorities shall inform the Commission of substantial practical difficulties in enforcement of the	No action is necessary by the Member State to give effect to Article 3f as it relates to actions by competent authorities and the Commission.

provisions of this Chapter or non-compliance with the provisions of this Chapter by Union or third-country intermediaries.”

Paragraph 2: “The Commission shall, in close cooperation with ESMA and the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (**), submit a report to the European Parliament and to the Council on the implementation of this Chapter, including its effectiveness, difficulties in practical application and enforcement, while taking into account relevant market developments at the Union and international level. The report shall also address the appropriateness of the scope of application of this Chapter in relation to third-country intermediaries. The Commission shall publish the report by 10 June 2023.”