

2013 No. 999

COMPANIES

**The Companies Act 2006 (Amendment of Part 18) Regulations
2013**

Made - - - - *24th April 2013*

Coming into force - - *30th April 2013*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 737 of the Companies Act 2006(a).

In accordance with sections 737(4) and 1290 of that Act, a draft of these Regulations has been laid before Parliament and approved by a resolution of each house of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Companies Act 2006 (Amendment of Part 18) Regulations 2013.

(2) They come into force on 30th April 2013.

Interpretation

2. In these Regulations, “the Act” means the Companies Act 2006.

Company to be allowed to pay for own shares by instalments

3. In section 691 of the Act (payment of purchase of own shares), after subsection (2) insert—

“(3) But subsection (2) does not apply in a case where a private limited company is purchasing shares for the purposes of or pursuant to an employees’ share scheme.”.

Financing purchase of own shares

4.—(1) Section 692 of the Act (financing of purchase of own shares) is amended as follows.

(2) For subsection (1) substitute—

“(1) A private limited company may purchase its own shares—

(a) out of capital in accordance with Chapter 5, and

(b) with cash (if authorised to do so by its articles) up to an amount in a financial year not exceeding the lower of—

(i) £15,000, or

(ii) the value of 5% of its share capital.

(1A) If the share capital of the company is not denominated in sterling, the value in sterling of the share capital shall be calculated for the purposes of subsection (1)(b)(ii) at an appropriate spot rate of exchange.

(1B) The rate must be a rate prevailing on a day specified in the resolution authorising the purchase of the shares.”

(3) In subsection (2) for “Subject to that” substitute “Subject to subsection (1)”.

Authority for off-market purchase

5. In each of the following provisions of the Act, omit the word “special”—

- (a) subsections (2)(a) and (b) and (4) of section 694 (shareholder authorisation required for contract for off-market purchase of company’s own shares),
- (b) subsections (2) and (3) of section 697 (shareholder authorisation required for variation of contract for off-market purchase of company’s own shares), and
- (c) subsections (2) and (3) of section 700 (shareholder authorisation required for release of company’s rights under contract for off-market purchase of company’s own shares).

Authority for off-market purchase for an employees’ share scheme

6. In section 693(1) of the Act (authority for purchase of own shares), after “by an off-market purchase,” insert “authorised in accordance with section 693A or”.

7. After section 693 of the Act, insert—

“693A Authority for off-market purchase for the purposes of or pursuant to an employees’ share scheme

(1) A company may make an off-market purchase of its own shares for the purposes of or pursuant to an employees’ share scheme if the purchase has first been authorised by a resolution of the company under this section.

(2) That authority—

- (a) may be general or limited to the purchase of shares of a particular class or description, and
- (b) may be unconditional or subject to conditions.

(3) The authority must—

- (a) specify the maximum number of shares authorised to be acquired, and
- (b) determine both the maximum and minimum prices that may be paid for the shares.

(4) The authority may be varied, revoked or from time to time renewed by a resolution of the company.

(5) A resolution conferring, varying or renewing authority must specify a date on which it is to expire, which must not be later than five years after the date on which the resolution is passed.

(6) A company may make a purchase of its own shares after the expiry of the time limit specified if—

- (a) the contract of purchase was concluded before the authority expired, and
- (b) the terms of the authority permitted the company to make a contract of purchase that would or might be executed wholly or partly after its expiration.

(7) A resolution to confer or vary authority under this section may determine the maximum or minimum price for purchase by—

- (a) specifying a particular sum, or

(b) providing a basis or formula for calculating the amount of the price (but without reference to any person’s discretion or opinion).

(8) Chapter 3 of Part 3 (resolutions affecting a company’s constitution) applies to a resolution under this section.”.

8. In section 694 of the Act, at the beginning of subsection (1) insert “Subject to section 693A,”.

9. In section 704 of the Act (no assignment of company’s rights to purchase own shares), after “a contract authorised under—” insert—

“(za) section 693A (authority for off-market purchase for the purposes of or pursuant to an employees’ share scheme),”.

Payment out of capital for purchase of own shares for an employees’ share scheme

10. In section 712(7) of the Act (determination of available profits), after “the period of three months ending with the date on which” insert “the solvency statement is made in accordance with section 720A or”.

11. In section 713(2) of the Act (requirements for payment out of capital), after “subject” insert “to section 720A and”.

12. After section 720 of the Act, insert—

“Requirements for payment out of capital: employees’ share schemes

720A Reduced requirements for payment out of capital for purchase of own shares for the purposes of or pursuant to an employees’ share scheme

(1) Section 713(1) does not apply to the purchase out of capital by a private company of its own shares for the purposes of or pursuant to an employees’ share scheme when approved by special resolution supported by a solvency statement.

(2) For the purposes of this section a resolution is supported by a solvency statement if—

- (a) the directors of the company make a solvency statement (see section 643) not more than 15 days before the date on which the resolution is passed, and
- (b) the resolution and solvency statement are registered in accordance with section 720B.

(3) Where the resolution is proposed as a written resolution, a copy of the solvency statement must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the member.

(4) Where the resolution is proposed at a general meeting, a copy of the solvency statement must be made available for inspection by members of the company throughout that meeting.

(5) The validity of a resolution is not affected by a failure to comply with subsection (3) or (4).

(6) Section 717 (resolution authorising payment: exercise of voting rights) applies to a resolution under this section as it applies to a resolution under section 716.

720B Registration of resolution and supporting documents for purchase of own shares for the purposes of or pursuant to an employees’ share scheme

(1) Within 15 days after the passing of the resolution for a payment out of capital by a private company for the purchase of its own shares for the purposes of or pursuant to an employees’ share scheme the company must deliver to the registrar—

- (a) a copy of the solvency statement,
- (b) a copy of the resolution, and
- (c) a statement of capital.

(2) The statement of capital must state with respect to the company's share capital as reduced by the resolution—

- (a) the total number of shares of the company,
- (b) the aggregate nominal value of those shares,
- (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
- (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

(3) The registrar must register the documents delivered to him under subsection (1) on receipt.

(4) The resolution does not take effect until those documents are registered.

(5) The company must also deliver to the registrar, within 15 days after the resolution is passed, a statement by the directors confirming that the solvency statement was—

- (a) made not more than 15 days before the date on which the resolution was passed, and
- (b) provided to members in accordance with section 720A(3) or (4).

(6) The validity of a resolution is not affected by—

- (a) a failure to deliver the documents required to be delivered to the registrar under subsection (1) within the time specified in that subsection, or
- (b) a failure to comply with subsection (5).

(7) If the company delivers to the registrar a solvency statement that was not provided to members in accordance with section 720A(3) or (4), an offence is committed by every officer of the company who is in default.

(8) If default is made in complying with this section, an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

(9) A person guilty of an offence under subsection (7) or (8) is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

13.—(1) Section 723 of the Act (when payment out of capital to be made) is amended as follows.

(2) In subsection (1), after “The payment out of capital” insert “, if made in accordance with a resolution under section 716”.

(3) After subsection (1), insert—

“(1A) The payment out of capital, if made in accordance with a resolution under section 720A must be made—

- (a) no earlier than five weeks after the date on which the shares to which the capital payment relates are surrendered, and
- (b) no more than seven weeks after that date.”.

Treasury shares

14.—(1) Section 724 of the Act (treasury shares) is amended as follows.

(2) For subsection (1), substitute—

“(1) This section applies where—

- (a) a limited company makes a purchase of its own shares in accordance with Chapter 4, and
 - (b) the purchase is made—
 - (i) out of distributable profits, or
 - (ii) with cash under section 692(1)(b).”.
- (3) Omit subsection (2).
- 15.** In section 729 of the Act (treasury shares: cancellation), omit subsections (2) and (3).

Jo Swinson

Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
24th April 2013

Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 30th April 2013 and extend to the whole of the United Kingdom, reflecting the extent of the Companies Act 2006 (c.46).

These Regulations amend Part 18 (Acquisition by limited company of its own shares) of the Companies Act 2006.

Regulation 3 removes the requirement on private limited companies to pay on purchase the price of shares in full in cases where the buy back is for an employees' share scheme; this will allow a private company to pay for its shares by instalments.

Regulation 4 permits private companies to use cash without having to identify it as distributable reserves to finance the buyback of its own shares, up to the value of £15,000 or 5% of the share capital of the company in each financial year.

Regulation 5 changes the requirements for shareholder authorisations concerning contracts for share buyback to be passed; instead of the authorisation being given by special resolution (a majority of 75% of shareholders), it may be given by ordinary resolution (being a simple majority, i.e. over 50% of shareholders).

Regulations 6 to 9 amend the Companies Act 2006 to allow a company to make off-market purchases of its own shares without having each buyback contract approved by shareholder resolution, as long as the company has a resolution from the shareholders authorising this.

Regulations 10 to 13 amend the requirements that a company must fulfil when buying back its own shares using capital in cases where the buy back is for the purposes of or pursuant to an employees' share scheme. The amendments reduce the requirement to a statement by the directors that the company is solvent and a special resolution by the shareholders.

Regulations 14 and 15 allow a company limited by shares to hold its own shares in treasury and to deal with such shares as treasury shares. The change also allows shares bought back with cash to be held as treasury shares.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Business Environment Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or from www.gov.uk/bis and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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The Companies Act 2006 (Amendment of Part 18) Regulations
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£5.75

E6467 04/2013 136467T 19585

ISBN 978-0-11-153878-4



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