

2009 No. 0000

COMPANIES

The Companies (Shareholders' Rights) Regulations 2009

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

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, commencement and transitional provision

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 (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".

(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" substitute "not less than 75% of the votes cast by those entitled to vote".

(3) In section 284 (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 proxies),

(a) 1972 c.68.
(b) S.I. 2007/193.

section 322 (exercise of voting rights on poll), 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 proxies

285.—(1) On a vote on a resolution on a show of hands at a meeting—

- (a) every proxy present who has been duly appointed by one member entitled to vote on the resolution has one vote, and
- (b) every proxy present who has been duly appointed by more than one member entitled to vote on the resolution—
 - (i) if instructed by all those members to vote for or against the resolution, has one vote for or (as the case may be) against the resolution;
 - (ii) if instructed by one or more members to vote for the resolution and by one or more others to vote against it, has one vote for and one vote against the resolution.

~~(2) Where a member appoints more than one proxy, subsection (1) applies as if the references to the proxy were to all the proxies taken together.~~

~~(3) On a poll demanded 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.~~

~~(4) The provisions of this section 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 ~~he~~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.

(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 shall 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)—

~~6. in subsection—), for subsections (2) to (4)(a) and (b), after “in same way” insert “as each other”;~~ substitute—

~~(a) after subsection (4) insert—~~

~~“(5) If powers in respect of shares in the company may be exercised by the corporation in different ways, subsection (4) applies in relation to the exercise of those powers only if (and so far as) a power in respect of the same shares is purportedly exercised in different ways.”.~~

~~“(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 one vote if the corporation is entitled to vote on the resolution.~~

~~(4) Subject to that, where more than one authorised person purport to exercise a power under subsection (2) in respect of the same shares or stock in the company—~~

- ~~(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 (rights to appoint proxies) insert—

“Obligation of proxy to actvote in accordance with instructions

324A. A proxy must actvote 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 shall 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.”.

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 ~~companies other than traded companies.~~”.

~~(2) For the section heading substitute “Notice required of general meeting: ~~companies other than traded companies~~”.~~

- (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 in relation to general meetings of trading 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 the case of an annual general meeting, at least 21 days, and
- (b) in any other case—
 - (i) at least 14 days if ~~the following two conditions~~ A and B (set out in subsections (2) and (3)) are met, and
 - (ii) at least 21 days if they are not.

(2) ~~The first condition is Condition A~~ 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.

~~For this purpose the facility to appoint a proxy by electronic means is a facility to vote by electronic means.~~

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.

(3) ~~The second condition Condition B~~ is that—

(a) ~~— a special resolution reducing the period of notice to not less than 14 days has been passed—~~

(~~i~~a) at the immediately preceding annual general meeting, or

(~~ii~~b) at a general meeting held since ~~the immediately preceding that~~ annual general meeting, ~~and,~~

(b) ~~— 4) In the case of a company which has not yet held an annual general meeting, condition B is that a special resolution was reducing the period of notice to not less than 14 days has been passed— at a general meeting.~~

~~(i) on a show of hands without any vote being cast against, or~~

~~(ii) on a poll by a majority of not less than two thirds of the total voting rights of the members of the company who (being entitled to do so) voted in person or by proxy on the resolution.~~

(4) ~~(5)~~ The company's articles may require a longer period of notice than that specified in subsection (1).

(5) ~~An (6) Where a general meeting is adjourned general, the adjourned meeting may be called by shorter notice than required by subsection (1) if—~~

(a) ~~— the But in the case of an adjournment is for lack of a quorum, this subsection applies only if—~~

(~~b~~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~~e) the adjourned meeting is to be held at least 10 days after the original meeting.

(7) 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).”.

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

(3) In section 334 (application to class meetings)—

(a) in subsection (1), for “(2) and (3)” substitute “(2) to (3)”;

(b) after subsection (2) insert—

“section 307A(1), (3)(2A) Section 307(1) to (6) apply in relation to a) and (5)(c) (notice required of general 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).”.

(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 307(1) and (2) of that Act, insert—

“section 307A(1), (3)(a) and (5)(c) (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 details 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 is determined in accordance with section 360B(23) (traded companies: share dealings before general meetings);
- (c) a statement of the ~~precise~~ 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 284A) or by electronic means (see section ~~360B~~)—
 - ~~(i) 360A),~~ a statement of the ~~precise procedure~~ procedure for doing so (including the date by which it must be done), and
 - ~~(ii) — 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) In advance of a general meeting, a traded company must publish 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.

(2) The matters published in accordance with subsection (1) must be available on the website throughout the period beginning with the first date on which notice of the meeting is given and ending with the conclusion of the meeting.

(3) Members’ statements, members’ resolutions and members’ matters of business received by the company after that date must be published as soon as reasonably practicable and be available on the website for the remainder of that period.

(4) 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.

(5) Failure to comply with this section does not affect the validity of the meeting or of anything done at the meeting.

(6) 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.

(7) 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 appears to the chairman of the meeting that 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)—

(a) before subsection (1), insert —

“(A1) In the case of a traded company —

- (a) the appointment of a person as proxy must be notified to the company in writing; and
- (b) the member is not required to ~~furnish to~~provide the company with anything relating to appointment of a proxy other than reasonable evidence of—
 - (i) the identity of the member and of the proxy, and
 - (ii) the member’s instructions (if any) as to how the proxy is to vote.”;

(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”.

(2) 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”.

(3) ~~In~~ After section 333 of that Act (~~sending documents relating to meetings etc in electronic form~~), before subsection (1) insert —

“(A1) Traded company: duty to provide electronic address for receipt of proxies etc

333A.—(1) A traded company must ~~give an electronic address in —~~

(a) ~~every, when sending out an instrument of proxy sent out by the company for the purposes of a general meeting of the company, and~~

(b) ~~every~~ or issuing an invitation to appoint a proxy issued by the company for those purposes give an electronic address for the receipt of such a any document or information relating to proxies for the meeting.

~~(A2) The following provisions~~ (2) 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 that address (subject to any limitations specified by the company when giving the address).

(3) Section 333(3) and (4) apply to both traded companies and other companies for the purposes of this section.”.

Traded companies: duty to hold AGM

14.—(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 ~~period~~ 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

15.—(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) ~~A~~ 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 statement of —

(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”.

Traded companies: members' power to require circulation of resolutions for AGM

17.—(1) Section 338 of the Companies Act 2006 (public companies: members' power to require circulation of resolutions for AGMs) is amended as follows:

(2) In subsection (1), after “public company” insert “or a traded company”.

(3) In subsection (4)—

(a) at the end of paragraph (b), insert “and”;

(b) at the end of paragraph (c), omit “and”, and

(c) omit paragraph (d).

(4) After that subsection insert—

(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—

“(5) The request must be received by the company—

(a) in the case of a public company that is not a traded company, not later than—

————— (i) six weeks before the section 337(3) (notice required of annual general meeting to which the request relates, or

————— (ii) if later, the time at which notice is given of that meeting;

(b) in the case of a traded company, at least 14 days before the meeting to which the request relates.”.

(5) In the section heading, for “Public companies” substitute “Public and traded companies”.

(6) In section 145(3) of the Companies Act 2006 (effect of provision of articles as to enjoyment or exercise of members' rights), in paragraph (g) after “public” insert “or traded”.

(7) In section 153(1) of the Companies Act 2006 (exercise of rights where shares held on behalf of others: members' requests), in paragraph (b), for “public companies” substitute “public and traded companies”.

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

“section 338(5)(a)(i) and (b) (request to circulate member's resolution at AGM of public or traded company).”.

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

16.—(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 require the company to include a matter (other than a proposed resolution) in the business to be dealt with at an annual general meeting a 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 to which the requests relate, or
- (b) at least 100 members who have a right to vote on the resolution at the annual general meeting to which the requests relate 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).

~~(34)~~ A request—

- (a) may be in hard copy form or in electronic form,
- (b) must identify the matter to be included in the business, ~~and~~
- (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.

~~(4) The~~⁽⁵⁾ A request must be received at least 14 days by the company not later than—

- (a) 6 weeks before the meeting to which it relates, or
- (b) if later, the time at which notice is given of that 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(5)(a)(i) and (b) insert—

“section 338A⁽⁴⁵⁾ (request to include matter in the business to be dealt with at AGM of traded company);”.

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

~~19.~~ (1) ~~Section 339 of the Companies Act 2006 (public companies: company’s duty to circulate members’ resolutions for AGM) is amended as follows.~~

~~(2) In the section heading, after “Public companies” insert “and traded companies”.~~

~~(3) At the beginning of subsection (2) insert “In the case of companies other than traded companies;”.~~

Traded companies: expenses of circulating members’ resolutions for AGM

~~20.~~ (1) ~~Section 340 of the Companies Act 2006 (public companies: expenses of circulation members’ resolutions for AGM) is amended as follows.~~

~~(2) Before subsection (1) insert —~~

~~“(A1) In the case of a traded company the expenses of complying with section 339 must be met by the company.~~

~~“(A2) In the case of a company that is not a traded company the following provisions apply.”.~~

~~(3) In the section heading, after “Public companies” insert “and traded companies”.~~

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

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

“Traded companies: duty to circulate members’ items 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 ~~at least one week before the meeting—~~

(a) give notice of it to each ~~person~~member of the company entitled to whom it has previously given receive notice of the annual general meeting—

~~(i) in the same manner as notice of the meeting, and by the same means, 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) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.

(3) 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 level 5 ~~on the standard scale~~ statutory maximum.”.

(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) ~~(b)~~ and after that entry insert—

“, and

section 340A(1) (traded companies: duty to circulate members’ items for AGM).”.

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

18. After section 340A of the Companies Act 2006 (public companies: expenses of circulation members’ resolutions for AGM) insert-

“340B Traded companies: expenses of circulating other matters to be dealt with at AGM

(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.”.

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 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 at close of business on the day before the meeting represented by those votes,
- (e) the number of votes cast in favour,
- (f) the number of votes cast against,
- (g) the number of abstentions (if counted).

(1B) A traded company must comply with subsection (1A) not later than—

- (a) the end of the 15th day after the date of the meeting, or
- (b) if later, the end of the first working day following 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: share dealings before 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 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, or
- (b) restricting a member’s right to vote at a general meeting of the company unless the member’s shares had previously been dealt with in a specified way.

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

(3) 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) any time on the day of the meeting before the time for the holding of the meeting,
or

~~(b) 48 hours before the time for the holding of the meeting if the company is unable to do so on the day of the meeting, and~~

~~(b) not earlier than 48 hours before the time for the holding of the meeting if the company is able to do so on the day of the meeting.~~

~~(3) In calculating the periods mentioned in subsections (1) and (2), no account is to be taken of any part of a day that is not a working day.~~

~~(4) (4) References in subsection (3) to a register of members “as at” any time are to the register of members as altered so as to reflect (to the extent that it is appropriate to do so) all information provided to the company before that time.~~

~~(5) Nothing in this section affects—~~

~~(a) the operation of—~~

~~(i) Part 22 of this Act (information about interests in a company’s shares) or of,~~

~~(ii) Part 15 of the Companies Act 1985 (a) (orders imposing restrictions on shares), or of~~

~~(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 the Companies Act 2006 (power of Secretary of State to prescribe model articles).”.~~

Meaning of “traded company”

21.—(1) After section 360B of the Companies Act 2006 (inserted by regulation ~~2221~~ above) 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. At the end of paragraph 23A of Schedule 3 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007(b) (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) 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(3) and (4) of the Companies Act 2006, references to annual general meetings and general meetings include ones held before 3 August 2009.

(a) 1985 c. 6.

(b) 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).

Date

Name
Parliamentary Under Secretary of State,
Department for Business, Enterprise and Regulatory Reform

DRAFT

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 24), 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 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 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 15 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 16 implements Article 6.3 (~~deadline for exercise of right under Article 6.1(b)) in respect of annual general meetings by setting 14 days as the latest time for notice requiring circulation of a resolution at the AGM of a company with traded shares.~~

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.

Regulations ~~18-17~~ and ~~19-18~~ 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 ~~2018 and 19~~ 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.

Regulation ~~24~~20 implements Article 14 (determination of voting results and publication on website).

Regulation ~~22~~21 implements Article 7 (requirements for participation and voting in general meetings).

Regulation ~~23-22~~ 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 ~~24-23~~ 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.

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/at] ... [and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website].