
DRAFT STATUTORY INSTRUMENTS

2001 No.

The Uncertificated Securities Regulations 2001

PART 5

MISCELLANEOUS AND SUPPLEMENTAL

MISCELLANEOUS

Construction of references to transfers etc.

37. References in any enactment or rule of law to a proper instrument of transfer or to a transfer with respect to securities, or any expression having like meaning, shall be taken to include a reference to an Operator-instruction to a participating issuer to register a transfer of title on the relevant issuer register of securities in accordance with the Operator-instruction.

Certain formalities and requirements not to apply

38.—(1) Any requirements in an enactment or rule of law which apply in respect of the transfer of securities otherwise than by means of a relevant system shall not prevent—

- (a) an Operator from registering a transfer of title to uncertificated units of a security upon settlement of a transfer of such units in accordance with his rules; or
- (b) an Operator-instruction from requiring a participating issuer to register a transfer of title to uncertificated units of a security.

(2) Subject to regulation 32(7), notwithstanding any enactment, instrument or rule of law, a participating issuer shall not issue a certificate in relation to any uncertificated units of a participating security.

(3) A document issued by or on behalf of a participating issuer purportedly evidencing title to an uncertificated unit of a participating security shall not be evidence of title to the unit of the security; and in particular—

- (a) section 186 of the 1985 Act shall not apply to any document issued with respect to uncertificated shares; and
- (b) regulation 3(2) of the 1965 Regulations and regulation 6(3) of the 1974 Regulations shall not apply to any document issued with respect to uncertificated units of a public sector security.

(4) Any requirement in or under any enactment to endorse any statement or information on a certificate evidencing title to a unit of a security—

- (a) shall not prohibit the conversion into, or issue of, units of the security in uncertificated form; and
- (b) in relation to uncertificated units of the security, shall be taken to be a requirement for the relevant participating issuer to provide the holder of the units with the statement or information on request by him.

(5) Sections 53(1)(c) and 136 of the Law of Property Act 1925 (which impose requirements for certain dispositions and assignments to be in writing) shall not apply (if they would otherwise do so) to—

- (a) any transfer of title to uncertificated units of a security by means of a relevant system; and
- (b) any disposition or assignment of an interest in uncertificated units of a security title to which is held by a relevant nominee.

(6) In paragraph (5) “relevant nominee” means a subsidiary undertaking of an Operator designated by him as a relevant nominee in accordance with such rules and practices as are mentioned in paragraph 25(f) of Schedule 1.

(7) Subsection (4) of section 183 of the 1985 Act shall not apply in relation to the transfer of uncertificated units of a security by means of a relevant system.

Fees charged by Operators

39.—(1) Subject to paragraph (2), nothing in these Regulations prevents an Operator from charging a fee for carrying out any function under Part 3 of these Regulations.

(2) An Operator may not charge a fee to a participating issuer for maintaining or keeping and entering up an Operator register of securities.

Trusts, trustees and personal representatives etc.

40.—(1) Unless expressly prohibited from transferring units of a security by means of any computer-based system, a trustee or personal representative shall not be chargeable with a breach of trust or, as the case may be, with default in administering the estate by reason only of the fact that—

- (a) for the purpose of acquiring units of a security which he has the power to acquire in connection with the trust or estate, he has paid for the units under arrangements which provide for them to be transferred to him from a system-member but not to be so transferred until after the payment of the price;
- (b) for the purpose of disposing of units of a security which he has power to dispose of in connection with the trust or estate, he has transferred the units to a system-member under arrangements which provide that the price is not to be paid to him until after the transfer is made; or
- (c) for the purpose of holding units of a security belonging to the trust or estate in uncertificated form and for transferring title to them by means of a relevant system, he has become a system-member.

(2) Notwithstanding section 192 of the 1985 Act, a trustee of a trust deed for securing an issue of debentures shall not be chargeable with a breach of trust by reason only of the fact that he has assented to an amendment of the trust deed only for the purposes of—

- (a) allowing the holding of debentures in uncertificated form;
- (b) allowing the exercise of rights attaching to the debentures by means of a relevant system; or
- (c) allowing the transfer of title to the debentures by means of a relevant system,

provided that he has given or caused to be given notice of the amendment in accordance with the trust deed not less than 30 days prior to its becoming effective to all persons registered as holding the debentures on a date not more than 21 days before the dispatch of the notice.

(3) Without prejudice to regulation 23(3) or section 360 of the 1985 Act, the Operator shall not be bound by or compelled to recognise any express, implied or constructive trust or other interest in respect of uncertificated units of a security, even if he has actual or constructive notice of the said trust or interest.

(4) Paragraph (3) shall not prevent, in the case of a participating issuer constituted under the law of Scotland, an Operator giving notice of a trust to the participating issuer on behalf of a system-member.

Notices of meetings etc.

41.—(1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, the participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

(2) Changes to entries on the relevant register of securities after the time specified by virtue of paragraph (1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary.

(3) For the purposes of—

- (a) serving notices of meetings, whether under section 370(2) of the 1985 Act, any other enactment, a provision in the articles of association or any other instrument; or
- (b) sending copies of the documents required to be sent to any person by section 238 of the 1985 Act,

a participating issuer may determine that persons entitled to receive such notices, or copies of such documents (as the case may be), are those persons entered on the relevant register of securities at the close of business on a day determined by him.

(4) The day determined by a participating issuer under paragraph (3) may not be more than 21 days before the day that the notices of the meeting, or the copies of the documents as the case may be, are sent.

(5) This regulation is without prejudice to the protection afforded—

- (a) by paragraph 5(3) of Schedule 4, to a participating issuer which is a company; and
- (b) by paragraph 13(4) or 15(3) of Schedule 4, to a participating issuer.

Notices to minority shareholders

42.—(1) Paragraphs (2) to (4) shall apply in relation to any uncertificated units of a security (other than a wholly dematerialised security) to which a notice given under section 429 of the 1985 Act relates, in place of the provisions of section 430(6) of that Act.

(2) Immediately on receipt of a copy sent under section 430(5)(a) of the 1985 Act of a notice given under section 429 relating to uncertificated units of a participating security (whether or not it also relates to certificated units of the security), a company which is a participating issuer shall—

- (a) by issuer-instruction—
 - (i) inform the Operator that the copy notice has been received, and
 - (ii) identify the holding of uncertificated units of the participating security to which the notice relates; and
- (b) enter the name of the relevant system-member on an issuer register of securities as the holder of those uncertificated units.

(3) On receipt of an issuer-instruction under paragraph (2)(a), the Operator shall delete any entry in an Operator register of securities which shows the relevant system-member as the holder of the uncertificated units of the participating security to which the notice relates.

(4) On registration on an issuer register of securities (in accordance with paragraph (2)(b)) of the relevant system-member as the holder of the uncertificated units of the participating security to which the notice relates, the participating issuer—

- (a) shall be under the same obligation to enter the offeror on that register as the holder of those units, in place of the relevant system-member, as it would be if it had received an Operator-instruction under regulation 28(2) requiring it to register a transfer of title to those units in that manner; and regulation 28(9) shall have effect accordingly; and
- (b) where the terms of issue of the security in question provide for a certificate to be issued, shall issue to the offeror a certificate in respect of those units.

(5) Subsection (1)(b) of section 185 of the 1985 Act shall apply in relation to the issue of a certificate by a participating issuer pursuant to paragraph (4)(b) as it applies in relation to the completion and having ready for delivery by a company of share certificates, debentures or certificates of debenture stock; and in that subsection as it so applies the reference to the date on which a transfer is lodged with the company shall be a reference to the date on which the participating issuer receives the copy notice sent under section 430(5)(a) of the 1985 Act.

(6) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (1) of section 185 of the 1985 Act shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (4)(b) in accordance with the requirements laid down in paragraph (5).

(7) Paragraphs (8) to (11) shall apply in relation to any units of a wholly dematerialised security to which a notice given under section 429 of the 1985 Act relates, in place of the provisions of section 430(6) of that Act.

(8) Immediately on receipt of a copy sent under section 430(5)(a) of the 1985 Act of a notice given under section 429 relating to units of a wholly dematerialised security, a company which is a participating issuer shall—

- (a) by issuer-instruction—
 - (i) inform the Operator that the copy notice has been received; and
 - (ii) identify the holding of units of the wholly dematerialised security to which the notice relates; and
- (b) by a further issuer-instruction, inform the Operator of the name of the transferee.

(9) On receipt of an issuer-instruction under paragraph (8)(a), the Operator shall delete any entry in an Operator register of securities which shows the relevant system-member as the holder of the units to which the notice relates.

(10) On receipt of an issuer-instruction under paragraph (8)(b), the Operator shall enter the transferee on the relevant Operator register of securities as the holder of the units to which the notice relates, in place of the relevant system-member.

(11) Where an Operator deletes an entry in an Operator register of securities pursuant to paragraph (9)—

- (a) the units of the wholly dematerialised security to which the notice relates shall notwithstanding that deletion, continue to be regarded as uncertificated units for the purposes of these Regulations until the Operator enters the transferee on the relevant Operator register of securities as the holder of those units;
- (b) subject to—
 - (i) subparagraph (c) or (d), as the case may be; and
 - (ii) any enactment or rule of law,

the relevant system-member shall, notwithstanding that deletion, retain title to the units of the wholly dematerialised security to which the notice relates until the transferee is entered on the relevant Operator register of securities pursuant to paragraph (10);

- (c) in the case of a security constituted under the law of England and Wales or Northern Ireland, the transferee shall acquire an equitable interest in the units of the wholly dematerialised security to which the notice relates;
- (d) in the case of a security constituted under the law of Scotland, the relevant system-member shall hold the units of the wholly dematerialised security to which the notice relates on trust for the benefit of the transferee.

(12) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of section 183 of the 1985 Act shall apply—

- (a) to a participating issuer and his officers in the event of a default in complying with paragraph (2)(b) or (8); and
- (b) to an Operator and his officers in the event of a default in complying with paragraph (3), (9) or (10).

(13) For the purposes of this regulation—

- (a) “offeror” has the meaning given by section 428(8) of the 1985 Act as construed in accordance with section 430D(5) of that Act;
- (b) “relevant system-member” means the system-member identified in the copy notice sent under section 430(5)(a) of the 1985 Act as the holder of the uncertificated units, or as the case may be the units of the wholly dematerialised security, to which the notice relates; and
- (c) “transferee” means the offeror or, if the offeror is not a system-member, the system-member in whose name the units of the wholly dematerialised security to which the notice given under section 429 of the 1985 Act relates are to be registered on the Operator register of securities.

(14) The reference in section 430D(5) of the 1985 Act to section 430(6) shall be taken to include a reference to the provisions of paragraphs (4), (8) and (9).

Irrevocable powers of attorney

31.—(1) This regulation applies where the terms of an offer for all or any uncertificated units of a participating security provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer.

(2) An acceptance communicated by properly authenticated dematerialised instruction in respect of uncertificated units of a security shall constitute a grant of an irrevocable power of attorney by the system-member accepting the offer in favour of the offeror, or person nominated by the offeror, in the terms set out in the offer.

(3) Where the contract constituted by such offer and acceptance as are referred to in paragraphs (1) and (2) respectively is governed by the law of England and Wales, section 4 of the Powers of Attorney Act 1971(1) shall apply to a power of attorney constituted in accordance with this regulation.

(4) A declaration in writing by the offeror stating the terms of a power of attorney and that it has been granted by virtue of this regulation and stating the name and address of the grantor shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of the grant; and any requirement in any enactment, rule of law, or instrument to produce a copy of the power of attorney, or such a copy certified in a particular manner, shall be satisfied by the production of the declaration or a copy of the declaration certified in that manner.

(1) 1971 c. 27.

(5) In the application of this regulation to an offer, acceptance or contract governed by the law of Scotland, any reference to an irrevocable power of attorney shall mean and include reference to an irrevocable mandate, however expressed.

Actual notice

44. For the purpose of determining under these Regulations whether a person has actual notice of a fact, matter or thing that person shall not under any circumstances be taken to be concerned to establish whether or not it exists or has occurred.

Participating securities issued in uncertificated form

45. Nothing in these Regulations shall require—

- (a) a participating issuer or its officers to maintain a register which records how many units of a wholly dematerialised security are held in certificated form; or
- (b) an Operator or participating issuer, or their officers, to take any action to change a unit of a wholly dematerialised security from uncertificated form to certificated form or vice versa.

DEFAULTS AND CONTRAVENTIONS

Breaches of statutory duty

46.—(1) A default in complying with, or a contravention of, regulation 16(8), 19(2), 25(1), 26, 28(5) or (6), 32(5), 33(5), or 42(2) or (8) shall be actionable at the suit of a person who suffers loss as a result of the default or contravention, or who is otherwise adversely affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) Paragraph (1) shall not affect the liability which any person may incur, nor affect any right which any person may have, apart from paragraph (1).

Liability of officers for contraventions

47.—(1) In regulation 16(7), 20(7), 21(5), 22(5), 28(9), 32(9) or (10), 33(11) or 42(6) or (12) an officer of a participating issuer shall be in default in complying with, or in contravention of, the provision mentioned in that regulation if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

(2) In regulation 20(7), 21(4), 22(4), 27(9), 32(9), 33(11) or 42(12) an officer of an Operator shall be in default in complying with, or in contravention of, the provision mentioned in that regulation if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

Exemption from liability

48. Regulations 21(5), 28(9), 32(9) and (10), and 33(11) shall not apply to any of the following or its officers—

- (a) the Crown;
- (b) any person acting on behalf of the Crown;
- (c) the Bank of England; or
- (d) in respect of a security which immediately before it became a participating security was transferable by exempt transfer within the meaning of the Stock Transfer Act 1982(2), a participating issuer.

(2) 1982 c. 41.

NORTHERN IRELAND

Application to Northern Ireland

49.—(1) In their application to Northern Ireland, these Regulations shall have effect with the following modifications.

(2) In regulation 38(5)—

- (a) for the reference to section 53(1)(c) of the Law of Property Act 1925 there shall be substituted a reference to section 6 of the Statute of Frauds (Ireland) 1695(3); and
- (b) for the reference to section 136 of the Law of Property Act 1925 there shall be substituted a reference to section 87 of the Judicature (Northern Ireland) Act 1978(4).

(3) In regulation 43(3) for the reference to section 4 of the Powers of Attorney Act 1971 there shall be substituted a reference to section 3 of the Powers of Attorney Act (Northern Ireland) 1971(5).

(4) In Schedule 4—

- (a) for references to the registrar of companies there shall be substituted references to the registrar of companies appointed under Article 653 of the 1986 Order;
- (b) for references to an overseas branch register there shall be substituted references to an external branch register within the meaning of Article 370 of the 1986 Order;
- (c) in paragraph 6(1), for the words from “in the case of a company registered in England and Wales” to the end there shall be substituted “elsewhere than in Northern Ireland”;
- (d) in paragraphs 9 and 15(5), for the words from “and references to the 1985 Act” to the end there shall be substituted “and references to the 1986 Order in the Companies (Inspection and Copying of Registers, Indices and Documents) Regulations (Northern Ireland) 1993(6) shall be construed accordingly”;
- (e) in paragraph 16(2), for subparagraphs (a) and (b) there shall be substituted “in Northern Ireland”; and
- (f) in paragraph 18(a), for the reference to the Companies Acts there shall be substituted a reference to the Companies Orders within the meaning of Article 2(3) of the 1986 Order.

(5) For references to provisions of the 1985 Act there shall be substituted references to the equivalent provisions of the 1986 Order and, in particular, for the references to the 1985 Act listed in column 1 of Schedule 5, in the provisions of these Regulations listed in column 2 of that Schedule, there shall be substituted the references to the 1986 Order listed in column 3 of that Schedule.

TRANSITORY PROVISIONS, AMENDMENTS AND REVOCATIONS

Transitory provisions

50. Schedule 6 (transitory provisions) shall have effect.

Minor and consequential amendments

51. Schedule 7 (minor and consequential amendments) shall have effect.

(3) 1695 c. 12 (1r).

(4) 1978 c. 23.

(5) 1971 c. 33 (N.I.).

(6) S.R. (N.I.) 1993 No. 66.

Revocations

- 52.—(1) The following provisions of the 1965 Regulations are hereby revoked, namely—
- regulation 4(3) and (4);
 - regulations 4A and 4B;
 - regulation 6(5);
 - regulation 17(7);
 - regulation 18(5);
 - regulation 19(2);
 - regulation 20(2); and
 - Schedule 1.
- (2) The following provisions of the 1974 Regulations are hereby revoked, namely—
- regulation 6(6);
 - regulation 6A;
 - regulation 7(1)(b), (4) and (5);
 - regulation 8(2) and (3);
 - regulation 9(4);
 - regulation 10(3);
 - regulation 16(4);
 - regulation 21(3); and
 - Schedule 2.
- (3) The 1995 Regulations are hereby revoked.
- (4) The following provisions of the Open-Ended Investment Companies Regulations 2001(7) are hereby revoked, namely—
- regulation 47(1);
 - in Schedule 3—
 - paragraph 2(2),
 - paragraph 5(1)(c) and the word “and” immediately before it, and
 - paragraph 6(3)(d) and the word “and” immediately before it;
 - paragraph 3 of Schedule 4; and
 - paragraph 12 of Schedule 7.