

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 18: Acquisition by Limited Company of Its Own Shares

Chapter 6: Treasury Shares

1026. Where a company buys back its own shares, it is normally required to cancel those shares. Certain companies (principally those which are listed or those which are traded on the Alternative Investment Market and equivalent companies in the EEA) may elect not to cancel shares which have been bought back but may hold the shares “in treasury”. A share which is held in treasury may be sold at a future point in time and this facility enables such companies to raise capital more quickly than they would otherwise be able to, as the directors do not have to obtain prior authority from the company’s members before selling treasury shares.

Section 727: Treasury shares: disposal

1027. This section replaces section 162D(2) of the 1985 Act and restates section 162D(1)(a) and (b) and 162D(3) of that Act. It defines (*in subsection (2)*) what is meant by “cash consideration” where treasury shares are sold and this mirrors, in part, the definition in section 583 (which restates section 738(2) to (4) of the 1985 Act and defines when a share is deemed to be paid up or allotted for cash).

1028. *Subsections (2)(e), (3) and (5)* are new. They enable the Secretary of State to specify, by order, what, in addition to the items specifically referred to in *subsection (2)*, constitutes “cash consideration” for the purposes of *subsection (1)(a)*.

1029. The power to make further provision in respect of what constitutes “cash consideration” for the purposes of a sale of treasury shares (that is, in addition to those already specified in *subsection (2)*) is intended to remove uncertainties surrounding other methods of settlement, for example, the CREST settlement system (see note on section 583) and will also act as a future proofing mechanism in the event that new methods of settlement are developed or identified.

Section 730: Treasury shares: notice of cancellation

1030. This section restates sections 169A(1)(b)(i), (2) to (4) of the 1985 Act and Schedule 24 to that Act. As now, where a company cancels shares which it has held in treasury it is required to give notice of this to the registrar within 28 days of the cancellation. The provision has, however, been updated to require companies to file a statement of capital in these circumstances (see note on section 619).

Section 732: Treasury shares: offences

1031. This section replaces section 162G of the 1985 Act. It renders both the company and every officer in default liable to an offence for any contravention of the provisions of this Chapter.

Section 737: General power to make further provision by regulations

1032. This section is a new provision which enables the Secretary of State, by regulations, to modify the provisions of Part 18 (see *subsection (1)*).
1033. Regulations made under this section may amend or repeal any of the provisions in this Part or make such other provision as appears to the Secretary of State appropriate in place of those provisions.
1034. The power to make regulations in this section will enable the Secretary of State to “future-proof” the provisions in Part 18 – which are primarily concerned with the maintenance of capital. This is desirable as many of these provisions are derived from EU law and may require amendment in the relatively near future (subject in part to the outcome of a fundamental study into alternatives to the current capital maintenance regime which is being carried out at EU level).
1035. Regulations made pursuant to the power in this section are subject to the affirmative resolution procedure, which means that they must be approved by both Houses of Parliament.