

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 21: Certification and Transfer of Securities

Chapter 2: Evidencing and Transfer of Title to Securities Without Written Instrument

1099. This Chapter replaces the existing power under section 207 of the 1989 Act relating to transfer of securities without a written instrument but goes beyond it in that it can be used to require, as well as to permit, the paper-free holding and transfer of shares or other securities. The provisions that make changes to the power are in sections 784, 786, 787 and 789.

Section 784: Power to make regulations

1100. This section provides for the power to make regulations about the transfer of title to securities without written instrument to be exercisable by the Secretary of State or the Treasury. Responsibility for section 207 of the 1989 Act and the regulations made under it passed from the Department of Trade and Industry to HM Treasury by virtue of article 2(1) of the [Transfer of Functions \(Financial Services\) Order 1992 \(S.I. 1992/1315\)](#) as part of a general transfer of responsibility for financial services matters. Dual responsibility is considered more appropriate for the making of regulations under the new power as the extension of paperless holding and transfer to new classes of shares or other securities involve matters which are part of company law. Exercise of the power will continue to be subject to the affirmative procedure.

Section 786: Provision enabling or requiring arrangements to be adopted

1101. This section provides that regulations under this Chapter may require, as well as permit, the paper-free holding and transfer of securities. The effect of *subsections (1) and (2)* is that regulations made under section 207 may:

- enable members of companies, or of designated classes of company, by ordinary resolution, to adopt a new form of paperless holding and transfer of shares and abandon paper-based forms of holding and transfer in relation to all existing and new securities of that company, or to specified types of securities; or
- make the adoption of a form of paperless transfer and the abandonment of paper-based forms of transfer mandatory for all securities, or specified types of securities, issued by companies generally or by designated classes of company.

1102. Regulations do not need to make it obligatory both to hold and to transfer securities in a paper-free way: the new arrangements could relate just to holding or just to transfer.

1103. *Subsection (3)* is designed to protect the right of individual investors to continue to hold shares in their own names rather than through nominees. It ensures that the new arrangements prescribed in the regulations will not mean that:

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

- people who would have been entitled to have their names entered in the company's register of members will lose that entitlement; or
- people who are entitled to exercise rights in respect of securities will lose that right.

1104. *Subsection (4)* provides that the regulations will be able to:

- prohibit the issue of share certificates or certificates for other types of security. Holders of securities to which any such prohibition applies will lose the option of continuing to hold certificates and transfer their shares by paper-based methods;
- ensure that such holders of securities are sent periodic statements of their holdings;
- make provision about the evidential value of certificates or statements.

Section 787: Provision enabling or requiring arrangements to be adopted: order-making powers

1105. This section provides additional flexibility by enabling Ministers to designate, by order (subject to negative resolution procedure), companies or classes of company to which the regulations are to apply, or to modify the effect of the regulations (or disapply them) in relation to a designated class of companies or specified companies.

Section 789: Duty to consult

1106. Ministers will be obliged to consult such persons as they consider appropriate before making regulations or designating a class of companies by order under the new powers. This obligation reflects the breadth of the proposed new powers, as well as the technical nature of some of the regulations which could be made under it.