

SCHEDULES

SCHEDULE 2

Regulation 28(2)

Transitional provision: registers relating to members of the supervisory organ of an SE

Interpretation

1.—(1) In this Schedule—

- (a) “existing SE” means an SE which, immediately before 1st October 2009, was registered in accordance with regulation 12 of the SEs Regulations or regulation 12 of the Northern Ireland SEs Regulations;
- (b) “the SEs Regulations” means the European Public Limited-Liability Company Regulations 2004;
- (c) “the new SEs Regulations” means the SEs Regulations, as amended by these Regulations;
- (d) “the old SEs Regulations” means the SEs Regulations, disregarding the amendments made by these Regulations;
- (e) “the Northern Ireland SEs Regulations” means the European Public Limited-Liability Company Regulations (Northern Ireland) 2004.

(2) In this Schedule—

“the Companies Acts register” means the register, within the meaning given by section 1080(2) of the Companies Act 2006, as that provision has effect in relation to SEs;

“the old Regulations” means—

- (a) the old SEs Regulations;
- (b) the Northern Ireland SEs Regulations;

“register of SO members” means the register of particulars of members of its supervisory organ which a two-tier SE is required to keep—

- (a) by regulation 79 of the SEs Regulations, or
- (b) by regulation 77 of the Northern Ireland SEs Regulations;

“SE” has the same meaning as in the SEs Regulations;

“two-tier SE” means an SE which has adopted the form of a two-tier system in its statutes.

Particulars to be registered

2.—(1) An existing SE need not comply with any provision of the new SEs Regulations which requires its register of SO members to contain particulars additional to those required by the old Regulations until the earlier of—

- (a) the date on which the SE makes up its first annual return made up to a date on or after 1st October 2009, and
- (b) the last date to which the SE should have made up that return.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) Sub-paragraph (1) does not apply in relation to a member of whom particulars are first registered on or after 1st October 2009 (whether the member was appointed before, on or after that date).

(3) Sub-paragraph (1) ceases to apply in relation to a member whose registered particulars fall to be altered on or after 1st October 2009 because they have changed (whether the change occurred before, on or after that date).

(4) This paragraph does not affect the particulars required to be included in the SE's annual return.

Relevant existing address to be treated as service address

3.—(1) In the case of an existing SE—

- (a) the relevant existing address of a member of the supervisory organ is deemed, on and after 1st October 2009, to be a service address, and
- (b) any entry in the SE's register of SO members stating that address is treated, on and after that date, as complying with the obligation in regulation 80(1)(b) of the new SEs Regulations to state a service address.

(2) The “relevant existing address” is—

- (a) the address which, immediately before 1st October 2009, appeared (in accordance with regulation 80(2) of the old SEs Regulations) in the SE's register of SO members as having been notified to the SE under regulations made under sections 723B to 723F of the Companies Act 1985(1) (service address notified by individual applying for confidentiality order in respect of usual residential address), or
- (b) if no such address appeared, the address which, immediately before that date, appeared in the SE's register of SO members as the member's usual residential address.

(3) Any notification of a change of relevant existing address occurring before 1st October 2009 that is received by the SE on or after that date is treated as being or, as the case may be, including notification of a change of service address.

(4) The operation of this paragraph does not give rise to any duty to notify the registrar under regulation 80C of the new SEs Regulations (duty to notify registrar of changes in particulars contained in the register).

Shadow directors

4.—(1) An existing SE must remove from its register of SO members on 1st October 2009 any entry relating to a person who is a shadow director of an SE by virtue of the members of the supervisory organ acting in accordance with the person's directions or instructions.

(2) Regulation 80C of the new SEs Regulations (duty to notify registrar of changes) applies as if the shadow director had ceased to be a member of the supervisory organ on that date.

Removal of particulars from regulation 79 register on or after 1st October 2009

5. The removal by an existing SE from its register of SO members on or after 1st October 2009 of particulars required by the old Regulations but not required by the new SEs Regulations does not give rise to any duty to notify the registrar under regulation 80C of the new SEs Regulations (duty to notify registrar of changes in particulars contained in the register).

(1) 1985 c.6; sections 723B to 723F were inserted by the Criminal Justice and Police Act 2001 (c.16), section 45(1) and (2).

Register of members' usual residential addresses (regulation 80B)

6.—(1) The duty of a two-tier SE to keep a register under regulation 80B of the new SEs Regulations (register of residential addresses of members of its supervisory organ) has effect on and after 1st October 2009.

(2) The entry on that register of information which, immediately before that date, was contained in the SE's register of SO members does not give rise to any duty to notify the registrar under regulation 80C of the new SEs Regulations (duty to notify registrar of changes in particulars contained in the register).

Duty to notify registrar of changes (Regulation 80C)

7.—(1) Regulation 80C of the new SEs Regulations (duty to notify registrar of changes) applies in relation to any change occurring on or after 1st October 2009—

- (a) among the members of a two-tier SE's supervisory organ, or
- (b) in the particulars contained in the register of SO members.

(2) In relation to a change occurring before that date—

- (a) regulations 79(2), (4) and (7) and 80 of the old SEs Regulations, or
- (b) regulations 77(2), (4) and (6) and 78 of the Northern Ireland SEs Regulations,

continue to apply.

Members of the supervisory organ: entries on the Companies Acts register

8.—(1) The registrar may make such entries in the Companies Acts register as appear to be appropriate, having regard to paragraphs 2 to 6 and the information appearing on the register immediately before 1st October 2009 or notified to the registrar in accordance with paragraph 7(2).

(2) In particular, the registrar may record as a service address—

- (a) a relevant existing address (within the meaning of paragraph 3), or
- (b) in the case of an SE falling within sub-paragraph (3), an address notified to the registrar in connection with that application as the usual residential address of a member of the supervisory organ.

(3) An SE falls within this sub-paragraph if—

- (a) it was registered on an application received by the registrar before 1st October 2009, and
- (b) the requirements as to registration were met in relation to it before that date.

(4) Any notification of a change of the relevant existing address occurring before 1st October 2009 that is received by the registrar on or after that date is treated as being or, as the case may be, including notification of a change of service address.

Residential addresses of members of the supervisory organ: protection from disclosure

9. Where the usual residential address of a member of the supervisory organ of an SE appears as a service address—

- (a) in the register of SO members by virtue of paragraph 3, or
- (b) in the Companies Acts register by virtue of paragraph 8,

that address is not protected information for the purposes of Chapter 8 of Part 10 of the Companies Act 2006.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

10.—(1) Section 242(1) of the Companies Act 2006 (duty of registrar to omit protected information from material available for inspection) does not apply—

- (a) to material delivered to the registrar before 1st October 2009, or
- (b) to material delivered to the registrar on or after 1st October 2009 by virtue of paragraph 7(2) (notification of change occurring before that date).

(2) In section 242(2)(b) of the Companies Act 2006 (exclusion of material registered before commencement) the reference to things registered before Chapter 8 of Part 10 of that Act comes into force is treated as including anything registered as a result of a notification in accordance with paragraph 7(2) (notification on or after 1st October 2009 of change occurring before that date).

(3) Sub-paragraphs (1) and (2) have effect subject to paragraph 12 (which provides for the continued protection of information formerly protected by a confidentiality order).

11. In determining under section 245(1) of the Companies Act 2006 whether to put on the public record the usual residential address of a member of the supervisory organ of an SE, the registrar may take into account only—

- (a) communications sent by the registrar on or after 1st October 2009, and
- (b) evidence as to the effectiveness of service coming to the registrar’s attention on or after that date.

Continuation of protection afforded by confidentiality orders under the Companies Act 1985

12.—(1) A member of the supervisory organ of an SE in relation to whom a confidentiality order under section 723B of the Companies Act 1985 was in force immediately before 1st October 2009 is treated on and after that date as if—

- (a) the member had made an application under section 1088 of the Companies Act 2006 (application to make address unavailable for public inspection) in respect of any address which, immediately before that date, was contained in “confidential records” as defined in section 723D(3) of the Companies Act 1985, and
- (b) that application had been determined by the registrar in the member’s favour.

(2) The provisions of regulations under section 1088 relating to decisions of the registrar in favour of an applicant (in particular, as to the duration and revocation of such a decision) apply accordingly.

(3) In those regulations as they apply in accordance with this paragraph, any reference to an offence under section 1112 of the Companies Act 2006 (false statement) is to be read as a reference to an offence under regulations under section 723E(1)(a) of the Companies Act 1985 in relation to the application for the confidentiality order.

13.—(1) A member of the supervisory organ of an SE in relation to whom a confidentiality order under section 723B of the Companies Act 1985 was in force immediately before 1st October 2009 is treated on and after that date as if—

- (a) the member had made an application under section 243(4) of the Companies Act 2006 (application to prevent disclosure of protected information by registrar to credit reference agency), and
- (b) that application had been determined by the registrar in the member’s favour.

(2) The provisions of regulations under section 243(4) relating to decisions of the registrar in favour of an applicant (in particular as to the duration and revocation of such a decision) apply accordingly.

(3) In those regulations as they apply in accordance with this paragraph, any reference to an offence under section 1112 of the Companies Act 2006 (false statement) is to be read as a reference

to an offence under regulations under section 723E(1)(a) of the Companies Act 1985 in relation to the application for the confidentiality order.

14. Where a confidentiality order under section 723B of the Companies Act 1985 was in force immediately before 1st October 2009 in relation to a member of the supervisory organ of an SE, regulation 79(5) and (8) of the new SEs Regulations (inspection of the SE's register of SO members) does not apply in relation to that part of the SE's register of SO members containing particulars of the usual residential address of the individual that before that date were protected from disclosure by regulation 79(6) of the old SEs Regulations.

Effect of pending application for confidentiality order

15.—(1) Section 723B(3) to (8) of the Companies Act 1985 (application for confidentiality order) continues to apply in relation to an application for a confidentiality order made before 1st October 2009.

(2) Paragraphs 12 to 14 (continuation of protection afforded by confidentiality orders) apply to a person in respect of whom such an application has been made, and has not been determined or withdrawn, as to a person in relation to whom a confidentiality order was in force immediately before that date.

(3) If the application is dismissed or withdrawn, those paragraphs cease to apply.

(4) If the application is successful, those paragraphs continue to apply as in the case of an individual in relation to whom a confidentiality order was in force immediately before 1st October 2009.