EXPLANATORY MEMORANDUM TO

THE COMPANIES ACT 2006 (AMENDMENT OF PART 18) REGULATIONS

2013 No. 999

1. This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument includes amendments that make deregulatory changes to provisions of the Companies Act 2006 relating to the purchase by a company of its own shares (share buy backs), in particular the authorisation and financing of share buy backs and the holding of repurchased shares 'in treasury'.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Companies Act 2006 contains the main statutory basis for UK company law and corporate governance, including regulations on how companies should be formed and operate. The Nuttall Review on Employee Ownership and respondents to the resulting consultation found that the current regulations faced by private companies seeking to buy back shares, particularly for the purposes of facilitating employee ownership, are burdensome. This instrument includes provisions to remove these regulatory restrictions (within Part 18 of the Companies Act 2006: Acquisition by a Limited Company of its Own Shares).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Jo Swinson MP, Minister of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Companies Act (Amendment of Part 18) Regulations 2013 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Nuttall Review on Employee Ownership found that companies seeking to utilise direct share ownership faced key company law challenges pertaining to the regulatory burdens and restrictions associated with buying back shares and on the ability of private companies to hold shares in treasury. The Nuttall Review recommended (Recommendation V) that the Department for Business, Innovation & Skills consult on measures to simplify the buy back process. The Government accepted this recommendation and consulted on this basis. The amendments in this instrument result from consideration of the consultation responses and will make it easier for companies, particularly private companies that want to buy back shares in connection with an employees share scheme to authorise and finance a buy back, and to hold shares in treasury.

- Consolidation

7.2 The clauses that we are amending have either not been amended since introduction or have had only minor changes made to them by the Companies (Share Capital and Acquisition by a Company of its Own Shares) Regulations 2009 (S.I. 2009/2022) and so the Department for Business, Innovation & Skills has no plans for consolidation at this time.

8. Consultation outcome

8.1 The consultation document 'Employee Ownership and share Buy Backs: Consultation on implementation of Nuttall Review recommendations' received 48 responses. Of these: 25 responses included completed response forms; 6 responses contained detailed comments on some or all aspects of the consultation, and the remaining 17 responses were general responses in favour of the proposals and/or on the Nuttall Review or focus on employee ownership in general. There was broad support for the main consultation proposals: to lower the threshold for shareholder approval for authorising buy backs; to allow for payment by instalments; to widen the range of options to finance a buy back, and allow private companies to hold treasury shares.

8.2 We are taking forward some of the suggestions made by respondents, for instance: to allow for advance approval of multiple buy backs, and to allow unlisted public companies to hold treasury shares. We have also taken into account concerns raised, particularly in relation to the financing of share buy backs, for instance, by retaining the need for a special resolution for financing buy backs out of capital.

8.3 In terms of regulations, a draft version was published with the consultation document. This instrument reflects the responses to the extent that we are taking those suggestions forward.

9. Guidance

9.1 We do not intend to provide specific guidance given that these changes are relatively uncomplicated in nature, and are sufficiently explained in the Explanatory Notes.

9.2 In February 2013, the Government published the formal response to the consultation which explained in greater detail the rationale for the amendments in this Statutory Instrument. The Government plans additional activities to raise awareness of employee ownership in general, including of these specific changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies is mainly limited to private companies that are seeking to buy back their own shares. This instrument will make it easier for such companies to authorise and finance the buy backs of shares and to hold repurchased shares in treasury. Any familiarisation costs are likely to be very small.

10.2 This instrument will not result in any direct impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Government has determined that given that the measures in this instrument are deregulatory and likely to be of benefit to companies of any size that use them, including small businesses. None of the measures add burdens to business or require a change to current practice.

11.3 Respondents to the consultation included small businesses, none of whom expressed concerns about any costs arising from the measures proposed.

12. Monitoring & review

12.1 The Department for Business, Innovation & Skills will undertake a post-implementation review three years after implementation to assess the impact of the legislative changes made, and of any benefits or costs to employee owned businesses.

13. Contact

Darren Walcott at the Department for Business, Innovation & Skills Tel: 020 7215 1626 or email: darren.walcott@bis.gsi.gov.uk can answer any queries regarding the instrument.