EXPLANATORY MEMORANDUM TO

THE COMPANIES ACT 2006 (AMENDMENT OF PART 18) REGULATIONS 2015

2015 No. 532

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 makes changes to Part 18 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'. These amendments ensure that changes introduced by the Companies Act 2006 (Amendment of Part 18) Regulations 2013 (S.I. 2013/999) operate effectively.

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

3.1 None

4. Legislative Context

4.1 This instrument amends Part 18 of the Companies Act 2006 (c.46). The Companies Act 2006 contains the main statutory basis for UK company law and corporate governance, and Part 18 governs how limited companies may acquire their own shares. The changes being made clarify the operation of provisions in Part 18 that were introduced by the Companies Act 2006 (Amendment of Part 18) Regulations 2013 (S.I. 2013/999). This instrument removed regulatory restrictions faced by private companies seeking to buy back shares, particularly for the purposes of facilitating employee ownership.

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 made the following statement regarding Human Rights:

In my view the provisions of the Companies Act 2006 (Amendment of Part 18) Regulations 2015 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 employ direct share ownership faced 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. Following a consultation on measures to simplify the buyback process and consideration of responses, the Department for Business, Innovation & Skills introduced amendments to the Companies Act 2006 through the Companies 2006 (Amendment of Part 18) Regulations 2013 (the "2013 Regulations") that were intended to make it easier for 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. However there were minor omissions in the instrument that prevented companies from taking full advantage of the new provisions.

7.2 Where a *de minimis* exemption had been introduced in the 2013 Regulations to allow smaller share purchases to proceed without the need to comply with all the necessary requirements under the Part 18 (Chapter 5) of the Companies Act, it failed to deal with the accounting consequences. The solution set out in this instrument is to link the *de minimis* exemption (section 692(1ZA) Companies Act 2006) to the accounting consequences of payments out of capital provisions section (section 734 Companies Act 2006).

7.3 The 2013 Regulations omitted to make clear the timing between when shares are surrendered and when they must be paid for when shares are bought back under section 720A Companies Act 2006, which allows for reduced procedural requirements for purchases for the purposes of or pursuant to an employees' share scheme. The new instrument makes this timing clear.

7.4 This instrument also removes a requirement for companies to provide a statement of capital in certain circumstances where the document would merely be replicating one already delivered.

- Consolidation

7.5 The clauses that we are amending have either not been amended since introduction or have had only minor changes made to them by 2013 Regulations and 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 A public consultation was carried out with regard to the original amendments in 2013. No further consultation was required for this instrument.

9. Guidance

9.1 We do not intend to provide specific guidance given that these changes simply fulfil the intention of the original measures which came into force in April 2013, and are uncomplicated in nature.

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 A regulatory impact assessment has not been produced for this instrument as the effect is already included in the impact assessment prepared for Companies Act 2006 (Amendment of Part 18) Regulations 2013 (SI 2013/999). The impact assessment is annexed to the Explanatory Memorandum published alongside the 2013 Regulations at www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Government has determined 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 original 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 in 2016, three years after implementation of The Companies Act 2006 (Amendment of Part 18) Regulations 2013, to assess the impact of the legislative changes made, and of any benefits or costs to employee owned businesses.

13. Contact

Janet Ford at the Department for Business, Innovation & Skills (Tel: 020 7215 6524 or email: janet.ford@bis.gsi.gov.uk) can answer any queries regarding the instrument.