STATUTORY INSTRUMENTS

1972 No. 1853

COUNTER-INFLATION

The Counter-Inflation (Dividends) Order 1972

Made - - - -	1*st December* 1972
Laid before Parliament	1*st December* 1972
Coming into Operation	1*st December* 1972

The Treasury, in exercise of the powers conferred on them by section 2 of, and paragraphs 1 and 2(1) of the Schedule to, the Counter-Inflation (Temporary Provisions) Act 1972(**a**) and of all other powers enabling them in that behalf, hereby make the following Order:—

Citation and commencement

1. This Order may be cited as the Counter-Inflation (Dividends) Order 1972, and shall come into operation on 1st December 1972.

Interpretation

2.—(1) In this Order—

"the Act" means the Counter-Inflation (Temporary Provisions) Act 1972;

"the basis period" means the period beginning one year earlier than the coming into operation of this Order and ending one year earlier than the expiration of section 2 of the Act;

"equity share capital" means any share capital not restricted, as regards participation in distributions of profits, to fixed rate dividends;

"fixed rate dividend" means a dividend which in accordance with the rights attached to any share capital is payable in cash at a fixed rate on that capital or at a rate fluctuating only with the standard rate of income tax;

"ordinary dividend" has the meaning given by article 4 of this Order;

"share" includes stock and "share capital" shall be construed accordingly;

"the standstill period" means the period beginning with the coming into operation of this Order and ending with the expiration of section 2 of the Act.

(2) For the purposes of the definitions of "the basis period" and "the standstill period" in paragraph (1) above, it shall be assumed, until an Order in Council is made under section 1(2) of the Act, that no such Order in Council will be made, and that accordingly section 2 of the Act will cease to have effect on the expiration of ninety days beginning with the date on which the Act was passed.

(3) In section 2(3) of the Act and this Order references to the declaration of a dividend by a company are references to the taking of a decision to pay it, whether or not the decision is that of the company in general meeting.

(**a**) 1972 c. 74.

(4) The Interpretation Act 1889(a) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Companies to which section 2(3) of the Act is to apply

3. Section 2(3) of the Act shall apply to every company—

(*a*) which is incorporated under the law of any part of the United Kingdom, and

(*b*) whose equity share capital is for the time being quoted in the official list of a stock exchange in the United Kingdom,

but which is not for the time being treated under section 359 of the Income and Corporation Taxes Act 1970(b) as an investment trust for purposes to which that section applies.

Distributions to which restrictions apply

4. For the purposes of section 2(3) of the Act " ordinary dividend " means a dividend payable in cash, not being a capital dividend nor a fixed rate dividend ; but so long as a company is prohibited by the said section 2(3) from declaring ordinary dividends as mentioned in that section, the company shall also be prohibited, without first obtaining the consent in writing of the Treasury,—

(*a*) from making any distribution out of assets of the company in respect of equity share capital of the company otherwise than by payment of an ordinary dividend or by repayment of capital ; and

(*b*) from assuming, whether conditionally or otherwise, any obligation to make a distribution as aforesaid.

Method of comparing dividends

5.—(1) For the purposes of section 2(3) of the Act, a company shall, subject to the provisions of this Order, be treated as declaring an ordinary dividend which exceeds the corresponding ordinary dividend declared by that company in the previous calendar year if it declares an amount of ordinary dividend which, alone or taken with any amount of ordinary dividends declared earlier during the standstill period, and subject to any adjustment required by paragraph (2) below, is greater than the total amount of the ordinary dividends declared by the company during the basis period ; and an ordinary dividend shall be treated as not corresponding to any ordinary dividend declared in the previous calendar year if no ordinary dividend was declared by the company during the basis period.

(2) The amount of the ordinary dividends declared by a company shall, for the purposes of paragraph (1) above, be adjusted in proportion to the amount by which the issued equity share capital of the company at the beginning of the standstill period exceeds, or is less than, its issued equity share capital at the beginning of the basis period ; and a company's equity share capital at the beginning of the standstill period shall be computed by taking its equity share capital at the beginning of the basis period and adjusting it—

(*a*) by adding the amount or value of any consideration actually received in the period between the beginning of the basis period and the beginning of the standstill period for the issue of equity share capital or on the payment up of issued equity share capital, and

(*b*) by deducting the amount or value of any money or other assets paid or transferred by the company during the period between the beginning

(a) 1889 c. 63. (b) 1970 c. 10.

of the basis period and the beginning of the standstill period for the repayment of any equity share capital,

and the amount of the company's equity share capital at the beginning of the basis period shall be what was then the amount of the company's paid-up equity share capital and of any share premium account (or other comparable account by whatever name called).

(3) For the purposes of paragraph (1) above the amount of a dividend in the case of a dividend falling to be paid after 5th April 1973, shall be taken to be the aggregate of the amount of the dividend and such proportion thereof as corresponds to the rate of advance corporation tax in force for the financial year in which the dividend is paid.

Close companies

6. Nothing in section 2(3) of the Act or this Order shall apply to the doing of anything by a company if—

(*a*) the company is a close company for purposes of Part XI of the Income and Corporation Taxes Act 1970 ; and

(*b*) the action taken by the company does not go beyond that which is required if there is not to be, within the meaning of section 289 of that Act, a shortfall in the company's distributions, or, within the meaning of paragraph 1(2) of Schedule 16 to the Finance Act 1972(**a**), an excess of relevant income over distributions, for an accounting period (any operation of section 290(4) of the Income and Corporation Taxes Act 1970 or of paragraph 14(1) of Schedule 16 to the Finance Act 1972 in relation to the restrictions imposed by section 2(3) of the Act and this Order being for this purpose disregarded).

Validity of declarations of dividends

7. The declaration of a dividend contrary to section 2(3) of the Act or this Order shall not be invalidated except to the extent to which it contravenes that section or this Order.

V. H. Goodhew,
Hugh Rossi,
Two of the Lords Commissioners of Her Majesty's Treasury.

1st December 1972.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order makes provision for the temporary standstill on ordinary dividends imposed by section 2(3) of the Counter-Inflation (Temporary Provisions) Act 1972.

The Order applies section 2(3) to all companies incorporated in the United Kingdom whose equity share capital is quoted on a stock exchange in the United Kingdom except investment trusts.

The Order provides that the total amount of ordinary dividends declared during the standstill period is not to exceed the total amount of such

(**a**) 1972 c. 41.

dividends declared during the corresponding period one year earlier (" the basis period "). Adjustments are to be made in respect of increases or reductions in equity share capital since the beginning of the basis period. If no ordinary dividend was declared during the basis period, no ordinary dividend may be declared during the standstill period. A company to which section 2(3) of the Act applies is prohibited by the Order from making, without the consent of the Treasury, any distribution out of assets in respect of its equity share capital otherwise than by payment of an ordinary dividend or repayment of capital.

In the case of dividends to be paid after 5th April 1973, the amount of a dividend is to be treated as including the appropriate proportion of advance corporation tax.

Special exemption is given to close companies to the extent that they increase dividends in order to comply with the special tax rules governing such companies.

SI 1972/1853
ISBN 0-11-021853-1

