STATUTORY INSTRUMENTS

1973 No. 659

COUNTER-INFLATION

The Counter-Inflation (Dividends) Order 1973

Made - - -	1*st April* 1973
Coming into Operation	1*st April* 1973
To be laid before Parliament	2*nd April* 1973

The Treasury, in exercise of the powers conferred on them by section 10 of, and paragraph 1(1) and (4) of Schedule 3 to, the Counter-Inflation Act 1973(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 1973, and shall come into operation on 1st April 1973.

Interpretation

2.—(1) In this Order and in section 10 of the Counter-Inflation Act 1973 as it applies in relation to this Order—

(*a*) "ordinary dividend" means a dividend payable in cash, not being a capital dividend nor a fixed rate dividend, and

(*b*) references to the declaration of a dividend by a company shall be construed as references to the taking of a decision to pay it, whether or not the decision is that of the company in general meeting.

(2) In this Order—

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

"financial year", in relation to a company, means any period in respect of which a profit and loss account of the company laid before it in general meeting is made up, and "the previous financial year" means the immediately preceding financial year;

"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;

"investment trust" means a company which is 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;

"share" includes stock, and "share capital" shall be construed accordingly.

(a) 1973 c. 9.

(b) 1970 c. 10.

(3) 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 the Order applies

3. This Order shall apply to every company (not being an investment trust)—

(*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.

Restrictions on ordinary dividends

4.—(1) Subject to the provisions of this Order, a company to which this Order applies shall not, without the consent in writing of the Treasury, declare for any financial year an amount of ordinary dividends which, alone or taken with any amount declared earlier for that financial year, and subject to any adjustment required by the following provisions of this article, exceeds by more than five per cent. the amount of the ordinary dividends declared by the company for the preceding financial year (which is not to be taken as including any amount declared in excess of that lawfully declared).

(2) The amount of the ordinary dividends declared by a company for any financial year shall, for the purposes of paragraph (1) above, be adjusted in proportion to the amount by which the issued equity share capital in respect of which a dividend is declared exceeds, or is less than, the issued equity share capital in respect of which the final dividend for its previous financial year was declared; and a company's issued equity share capital in respect of which a dividend is declared shall be computed by taking its equity share capital in respect of which the final dividend for its previous financial year was declared and adjusting it—

(*a*) by adding the amount or value of any consideration actually received, in the period between the date of the declaration of the final dividend for the previous financial year and the date of the declaration in point, for the issue of equity share capital or on the payment up of issued equity share capital (less, in a case where the company has issued shares at a premium, the aggregate amount or value of the premiums included in such consideration), and

(*b*) by deducting the amount or value of any money or other assets paid or transferred by the company during the said period for the repayment of any equity share capital,

and the amount of the company's equity share capital in respect of which the final dividend for the previous financial year was declared shall be what was at the time of such declaration the amount of the company's paid up equity share capital.

(3) Where, for the purposes of paragraph (1) above, comparison is to be made between the amounts of ordinary dividends for two financial years differing in length by a month or more (both years having come to an end), the amount to be taken into account as dividends declared for the later year shall be treated as increased or reduced in proportion to the greater or less length of the earlier year.

(a) 1889 c. 63.

(4) For the purposes of pararaph (1) above, the amount of a dividend, in the case of a dividend paid or 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.

(5) For the purposes of paragraph (1) above, a dividend not expressed to be payable for the financial year in which it is declared or for the previous financial year shall be treated as a dividend for the year in which it is declared.

Restriction on other distributions

5. A company to which this Order applies shall not, without the consent in writing of the Treasury,—

(*a*) make 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; or

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

New companies and newly quoted companies

6.—(1) In relation to the declaration of ordinary dividends in or for its first financial year by a new company formed in connection with the reconstruction or amalgamation of another company or companies, this Order shall have effect as if the company were not a new company but had paid no ordinary dividends for any previous financial year.

(2) Subject to paragraph (1) above, nothing in this Order shall be taken to apply to a new company during its first financial year or during its next following financial year, or to the declaration by it of ordinary dividends for either of those years.

(3) Nothing in this Order shall be taken to apply to a company (not being a new company to which paragraph (1) or (2) above applies) during its financial year in which it first becomes a company whose equity share capital is quoted in the official list of a stock exchange in the United Kingdom or during its next following financial year, or to the declaration by it of ordinary dividends for either of those years.

Close companies

7. Nothing in 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 likely to be 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

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

Act 1970 or of paragraph 14(1) of Schedule 16 to the Finance Act 1972 in relation to the restrictions imposed by this Order being for this purpose disregarded).

Tim Fortescue,
V. H. Goodhew,
Two of the Lords Commissioners of Her Majesty's Treasury.

1st April 1973.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order provides for the restriction of the ordinary dividends of all companies (other than investment trusts) incorporated in the United Kingdom whose equity share capital is quoted on a stock exchange in the United Kingdom.

The Order provides that the total amount of ordinary dividends declared for a company's financial year is not to exceed by more than five per cent. the total amount of ordinary dividends declared for its previous financial year. Adjustments are to be made for increases or reductions in equity share capital and for differences of a month or more in the length of financial years.

Companies to which the Order applies are prohibited from making distributions out of assets in respect of 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 new companies and newly quoted companies, and also to close companies to the extent that they increase dividends in order to comply with the special tax rules governing such companies.

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