EXPLANATORY MEMORANDUM TO

THE COMPANIES ACT 2006 (COMMENCEMENT NO. 2, CONSEQUENTIAL AMENDMENTS, TRANSITIONAL PROVISIONS AND SAVINGS) ORDER 2007
2007 No. [DRAFT]

AND

THE COMPANIES ACTS (UNREGISTERED COMPANIES) REGULATIONS 2007
2007 No. 318

1. 1.1 This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the House of Lords Select Committee on the Merits of Statutory Instruments and the Joint Committee on Statutory Instruments.

2. Description

2.1 The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007:-

(a) brings into force certain provisions of the Companies Act 2006 with effect from 6 April 2007. These are as follows:-

- Part 28 and other related provisions of the Companies Act 2006 connected with implementation of Directive 2004/25/EC of the European Parliament and of the Council on Takeover Bids ("the Takeovers Directive");

- section 1284(1) and other related provisions of the Companies Act 2006 related to extending Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (concerning community interest companies) to Northern Ireland; and

- sections 1284(2) and 1295 of, and Schedule 16 to, the Companies Act 2006 so far as relating to specified repeals (sections 428 to 430F of the Companies Act 1985 ("the 1985 Act") (takeovers), the definition of "EEA State" in section 744 of the 1985 Act and paragraphs 2, 2A and 2B of Schedule 7 of the 1985 Act for limited purposes (matters to be dealt with in directors' report) (and equivalent provisions in Northern Ireland)).

(b) amends primary and secondary legislation in consequence of the commencement of provisions in article 2 of the draft Order; and

(c) restores the application to limited liability partnerships of section 723C(1)(a) of the 1985 Act, the repeal of which had been inadvertently brought into force by the Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006 without a saving in respect of its application to limited liability partnerships.

2.2 The Companies Acts (Unregistered Companies) Regulations 2007, in extending specified provisions of the Companies Act 2006 regarding takeovers to unregistered companies, are designed to give full effect to implementation of the Takeovers Directive alongside commencement of Part 28 of that Act.

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

3.1 Article 11(2) relies on section 1296(1) of the Companies Act 2006 to save the application to limited liability partnerships ("LLPs") of a provision of the Companies Act 1985 which it had been intended should continue to apply to LLPs despite the repeal of that provision in its application to companies. Because of an error in the Companies Act 2006 (Commencement No. 1, Transitional Provisions and Savings) Order 2006, this was not achieved. The Department considers that this saving is effective notwithstanding that the repeal has already come into force, because its effect is not to reverse the repeal but to save the application of the repealed provision to LLPs and thus to cause it to apply again from the coming into force of the Companies Act 2006 (Commencement No. 2, Consequential Amendments ,Transitional Provisions and Savings) Order 2007. The Department does not consider that savings under section 1296(1) have to be made at the same time as the commencement to which they relate.

3.2 It has been suggested that the *vires* ought to be found within sections 15 to 17 of the Limited Partnerships Act 2000. They could not, however, have been relied upon in this commencement order, because the power there is to make regulations. There seems to be, in any event, no difference between what could have been achieved had separate regulations been made under section 15(b) of that Act and what has been provided in the Order under section 1296(1) of the Companies Act 2006.

3.3 For the purpose of transparency, the Department wishes to draw specific attention to the following. In commencing Part 28 of the Companies Act 2006, new statutory rule-making duties and powers are conferred on the Takeover Panel by section 943. Rules made under these provisions will contain detailed provisions related to takeover regulation in the UK. Consistent with the obligations imposed upon, and powers given to, the Takeover Panel, it is the Panel's intention to adopt rules under this power to take effect from commencement of these provisions on 6 April 2007. These rules, "The Takeover Code," will be available on the website of the Takeover Panel (http://www.thetakeoverpanel.org.uk/new/) and will substantially replicate, on a wholly statutory basis, the existing body of rules contained in the Code.

4. Legislative Background

Companies Act 2006

4.1 The Companies Act 2006 was given Royal Assent on 8 November 2006. It started its passage through Parliament in November 2005, as the Company Law Reform Bill, after the "Company Law Reform" White Paper was published in March 2005. Its name was then changed to the Companies Bill as a result of an amendment made during Commons committee proceedings. The Companies Act 2006 has substantially rewritten company law to make it easier to understand and more flexible,

especially for small businesses. The Act partly restates some of the previous Companies Acts 1985 and 1989; partly rewrites some of the previous Companies Acts 1985 and 1989 to make the provisions simpler and easier to understand; and partly introduces new provisions.

The Takeovers Directive - The Takeovers Directive (Interim Implementation) Regulations 2006

4.2 Part 28 of the Companies Act 2006 implements the Takeovers Directive. The Directive was required to be implemented by 20 May 2006. As the Companies Act 2006 had not completed Parliamentary passage at this date, interim implementation of the Directive was given effect to by The Takeovers Directive (Interim Implementation) Regulations 2006(SI 2006/1183) ("the interim takeover Regulations"). That instrument was drawn to the attention of the House by the House of Lords Select Committee on the Merits of Statutory Instruments (Thirty-Fourth Report, Session 2005-06) on the ground that it gave rise to issues of public policy likely to be of interest to the House. The interim takeover Regulations are revoked by the present commencement Order.

4.3 Details concerning a) the purpose of the Takeovers Directive; b.) the negotiation of the Directive; c.) Parliamentary scrutiny of the Directive d.) the history of takeover regulation in the United Kingdom; and e.) the main differences between the interim takeover Regulations and the provisions now found at Part 28 of the Companies Act were set out in the Explanatory Memorandum (an extract from which is set out at Annex A) which accompanied the interim takeover Regulations.

4.4 A transposition note in respect of the Takeovers Directive is provided at Annex B.

Extension of Community Interest Companies to Northern Ireland

4.5 Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 ("CAICE Act") made provision for the establishment of a new corporate vehicle, the "community interest company" ("CIC"). The CAICE Act does not extend to Northern Ireland, although there is equivalent Northern Ireland legislation (the Companies (Audit, Investigations and Community Enterprise) Order 2005 (SI 2005/1967 (N.I.17)). However, the parts of the Order related to CICs were never brought into force awaiting the making of necessary further secondary legislation mirroring that in relation to Great Britain (the Community Interest Company Regulations 2005 (SI 2005/1788)). It has been decided to extend CICs to Northern Ireland in advance of bringing into force the rest of the Companies Act 2006.

Other Issues

4.6 As stated in paragraph 2.1, the Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 brings only some of the provisions of the Companies Act 2006 into force. Some of the provisions brought into force refer to expressions and concepts defined in parts of the Act not yet brought into force. This has resulted in the need for the transitional adaptations contained in Schedule 1 to the Order. Most of these take the approach of applying expressions and concepts defined in the Companies Act 1985 to the provisions brought into force.

4.7 The Order also includes transitional provisions and savings in articles 8 to 11 and Schedule 6. Amongst other things these provide a transition from the regime under the interim takeover Regulations to the regime introduced by the provisions of Part 28 of the Companies Act 2006.

5. Territorial Extent and Application

5.1 These instruments apply to all of the United Kingdom, except for the provisions extending the CICs provisions to Northern Ireland, which only apply in that jurisdiction (replicating provisions of the CAICE Act already applying to Great Britain).

6. European Convention on Human Rights

6.1 Margaret Hodge MBE MP, Minister of State for Industry and the Regions, has made the following statement regarding Human Rights:

"In my view the provisions of The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 are compatible with the Convention rights."

6.2 As The Companies Acts (Unregistered Companies) Regulations 2007 are subject to negative resolution procedure and do not amend primary legislation, no statement is required in respect of them.

7. Policy background on Extension of Community Interest Companies to Northern Ireland

7.1 CICs were introduced in Great Britain by the CAICE Act with the intention of making it simpler and more convenient to establish a business whose profits and assets are to be used for the benefit of the community. There is a statutory "lock" on the profits and financial assets of CICs and, where a CIC is limited by shares, power to impose a "cap" on any dividend.

7.2 Companies wishing to become a CIC are required to pass a community interest test and to produce an annual report showing that they have contributed to community interest aims. An independent Regulator is responsible for approving the registration of CICs and ensuring they comply with their legal requirements. The Regulator has powers to obtain information from CICs, appoint, suspend or remove CIC directors, make orders in respect of the property of CICs, apply to the court for a CIC to be wound up and set the dividend cap.

7.3 It was always the intention that the availability of the CIC corporate vehicle be extended to Northern Ireland once the relevant secondary legislation was in place. However, events have been overtaken by the project to merge the company law legislation in Great Britain and Northern Ireland achieved through the Companies Act 2006.

Consultation

7.4 Consultation on the CICs provisions took place as part of the consultation process on the CAICE Act, in particular, through a public consultative document, "Enterprise for Communities: proposals for a Community Interest Company," issued in March 2003.

Guidance

7.5 Guidance on all provisions commenced by these instruments is available on the Department of Trade and Industry website http://www.dti.gov.uk/bbf/co-act-2006/index.html.

8. Impact

8.1 Regulatory Impact Assessments relating to the Companies Act 2006 (http://www.dti.gov.uk/bbf/co-act-2006/clr-review/page22794.html) and the CAICE Act (http://www.dti.gov.uk/consultations/ria/index.html), provisions of which are commenced or applied by this Order, are available on the website of the Department of Trade and Industry. The Companies Acts (Unregistered Companies) Regulations 2007 are not expected to have cost or benefit implications for business. They simply replicate provisions related to takeover of certain unregistered companies which are already in force as a consequence of the interim takeover Regulations.

8.2 The impact on the public sector is expected to be minimal. Regulation of takeover bids will remain a matter for the Takeover Panel, which will continue to be independent of Government. The independent regulator in respect of CICs incorporated in Great Britain will also be responsible for CICs incorporated in Northern Ireland.

9. Contact

9.1 Mike Edbury at the Department of Trade and Industry (telephone number: 0207 215 0231 or e-mail: Michael.Edbury@dti.gsi.gov.uk) can answer any queries regarding these instruments.

ANNEX A – EXTRACT FROM THE EXPLANATORY MEMORANDUM TO THE TAKEOVERS DIRECTIVE (INTERIM IMPLEMENTATION) REGULATIONS 2006 (SI 2006/1183)

"EU Takeovers Directive

4.1 The instrument implements, on an interim basis, the Takeovers Directive. The Directive lays down minimum rules concerning the regulation of takeovers of companies governed by the laws of EU Member States[1] and whose shares are traded on a regulated market[2]. The Takeovers Directive was adopted on 21 April 2004 and must be implemented by Member States no later than 20 May 2006. […]

4.2 The Takeovers Directive contains:-

- A regulatory framework for bodies that supervise takeover bids;
- General principles that apply to the conduct of takeover bids;
- Basic rules about takeover bids (for instance, about when a takeover bid must be made and the price that must be paid to shareholders, the contents of offer documents prepared by a takeover bidder, requirements to inform employees and the time period a takeover bid will be open for);
- Provisions restricting barriers to takeovers (such as action that might be taken to prevent a takeover by a company or its board of directors);
- Disclosure requirements for companies; and
- Provisions dealing with the problems of, and for, residual minority shareholders following a successful takeover bid (known as "squeeze-out" and "sell-out").

4.3 The Takeovers Directive was considered legally and politically important and was subject to extensive scrutiny in both Houses of Parliament. In particular, the House of Lords Select Committee on the European Union undertook two enquiries into the Directive, reporting in the 1995-96 and 2002-03 sessions[3]. The Directive was also subject to debate in the House of Commons European Standing Committee C[4]. Key issues considered by both scrutiny Committees included the extent to which the minimum standards approach adopted by the Directive really would increase the effectiveness of takeover regulation across the EU and the degree to which the Directive should address in substance barriers to takeovers. Equally importantly, the Committees examined whether the placing of the domestic takeover regulatory regime within a statutory framework, as the Directive requires, would lead to an increase in "tactical litigation" (litigation to frustrate and delay takeover bids).

Takeover Regulation in the UK

4.4 Historically, very few provisions related to takeover regulation have been contained in statute (the only substantive legislative provisions are at Part 13A of the

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[1] "Member States" includes the three States that make up the EEA

[2] Regulated markets are defined by article 1(13) of Directive 93/22/EEC. A financial market (e.g. a Stock Exchange) may ask to be designated as a "regulated market" if it meets conditions laid down. A list of regulated markets in the United Kingdom is situated on the website of the Financial Services Authority at http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html

[3] "Takeover Bids" (13th Report, 1995-96, HL Paper 100) and "If At First You Don't Succeed…Takeover Bids Again" (28th Report, 2002-03, HL Paper 128).

[4] "Takeover Bids", European Standing Committee C, Session 2002-03, 19 March 2003

Companies Act 1985 (Part 14A of the Companies (Northern Ireland) Order 1986), and relate to squeeze-out and sell out rights.

4.5 The Takeover Panel is the regulatory body which administers the Takeover Code (both making the rules in the Takeover Code and enforcing them). Its central objective is to ensure equality of treatment and opportunity for all shareholders in takeover bids. The Takeover Panel was set up in 1968. The concept was proposed by the Governor of the Bank of England and the Chairman of the Stock Exchange in response to mounting concern about practices unfair to shareholders which had featured in a number of controversial takeovers. Between 1968 and 2005 the Takeover Panel handled some 7,000 announced offers and, in addition, approximately half as many cases where no offer was, in the event, announced.

Company Law Reform Bill

4.6 Substantive provisions to implement the Takeovers Directive are contained at Part 22 of the Company Law Reform Bill [n*ow part 28 of the Companies Act 2006*]. The Bill will not, however, have completed Parliamentary passage by 20 May 2006, by when the Takeovers Directive must be implemented. The instrument substantially follows the approach in the Company Law Reform Bill, with the following four important differences:-

a.) Types of transactions - The instrument will only apply to takeover bids covered by the Takeovers Directive. The Bill provisions will apply more widely to other types of transactions which may have an effect on the ownership or control of companies, such as takeovers of public companies whose shares are not traded on a regulated market and mergers.

b.) Panel's Rule-making Power - In regulations made under section 2(2) of the European Communities Act 1972, it is not possible to give the Panel power to make and amend rules which have statutory effect. The Panel will not, therefore, during the period between 20 May 2006 and the entry into force of the relevant provisions of the Bill, be able to adopt amendments to the Takeover Code in so far as they relate to matters contained in the Takeovers Directive. Instead, the instrument gives effect to the Code as it stands immediately before the instrument was made (i.e. the Code as amended to ensure conformity with the Takeovers Directive). The Bill includes a rule-making power which, once it becomes law, will enable the Panel to make and amend rules both in relation to transactions covered by the Takeovers Directive and other types of transactions which may have an effect on the ownership or control of companies.

c.) Squeeze-out and sell-out provisions - The instrument substantially replicates those squeeze-out and sell-out provisions already contained in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986, with changes either necessary to implement the Takeovers Directive or arising out of or related to obligations in the Directive. Further unrelated changes being made by the Bill to reflect recommendations made by the Company Law Review (an independent review of company law sponsored by the Department of Trade and Industry which reported finally in 2000) will not be included.

d.) Offences - Certain offence provisions under the Regulations (for instance, in relation to unlawful disclosure of information subject to secrecy provisions) will apply

in a different way to those under the Bill. They will be restricted to matters covered by the Takeovers Directive. Similarly, the maximum penalties that may be imposed under the Regulations are restricted by the powers in the European Communities Act 1972."

ANNEX B

TRANSPOSITION NOTES

DIRECTIVE 2004/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 21 APRIL 2004 ON TAKEOVER BIDS

Part 28: Takeovers, etc. – Directive on Takeovers Bids (2004/25/EC)

The Takeovers Directive

1. *Part 28* of the Act implements Directive 2004/25 EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids (OJ L142, 30 April 2004).

2. The Takeovers Directive lays down, for the first time, minimum EU rules concerning the regulation of takeovers of companies whose shares are traded on a regulated market. The Directive was one of the measures adopted under the EU Financial Services Action Plan and aims to strengthen the Single Market in financial services by facilitating cross-border restructuring and enhancing minority shareholder protection.

3. The Takeovers Directive contains general principles that Member States must adhere to in regulating takeover activity and a framework relating to the functions and jurisdiction of takeover regulatory authorities. It also lays down provisions relating to the mandatory bid (a requirement whereby a party gaining control of a company must make an offer to all shareholders at an equitable price), takeover bid documentation, time allowed for acceptance of the bid, the obligations of the board of the offeree company and other matters related to the bid.

4. Additionally, the Takeovers Directive has provisions addressing barriers to takeovers (such as action that might be taken by a company or its board before or during a bid to prevent a takeover), requiring disclosure of certain information by companies traded on a regulated market and dealing with the problems of, and for, residual minority shareholders following a successful takeover bid (so-called 'squeeze-out' and 'sell-out' provisions).

The Takeovers Directive (Interim Implementation) Regulations 2006

5. In view of the fact that the Takeovers Directive was required to be implemented by 20 May 2006, by which date the Act had not completed Parliamentary passage and received Royal Assent, interim implementation provisions were introduced under section 2(2) of the European Communities Act 1972 (ECA 1972). These provisions are contained in The Takeovers Directive (Interim Implementation) Regulations 2006 (S.I. 2006 No.1183). A copy of those Regulations together with the accompanying Explanatory Memorandum, Regulatory Impact Assessment and Transposition Notes is available on the website of the Office of Public Sector Information (http://www.opsi.gov.uk/stat.htm). The Regulations are repealed and replaced on commencement of Part 28 of the Act.

Part 28 – Takeovers etc

6. Since 1968, takeover regulation in the UK has been overseen by the Takeover Panel administering rules and principles contained in the "City Code on Takeovers and Mergers". In order to bring UK takeover regulation within the requirements laid down in the Directive, *Part 28* of the Act is designed to place it within a complete and coherent statutory framework. The detailed rules relating to takeover regulation in compliance with the Directive will be prescribed by the Panel in its Takeover Code, under a statutory rule-making obligation

imposed upon the Panel by the Act (*section 943(1)*). The Takeover Code has already been revised with effect from 20 May 2006, on an interim basis under the 2006 Regulations, to make it wholly consistent with the requirements of the Takeovers Directive.

7. 'Squeeze-out' and 'sell-out' provisions were previously prescribed by Part 13A of the 1985 Act. Chapter 3 of Part 28 of the Act replaces those provisions in their entirety with certain amendments which ensure they are wholly consistent with the Takeovers Directive requirements.

8. Provisions related to disclosures by companies are contained in Part 7 of the 1985 Act and amendments to that Part are made in Chapter 4 of Part 28 to give effect to the additional disclosure requirements imposed by the Takeovers Directive on companies traded on a regulated market.

9. The Companies Acts (Unregistered Companies) Regulations 2007 extends application of provisions of Part 28 of the Companies Act 2006 to matters related to takeovers of unregistered companies whose shares are traded on a regulated market. This is to ensure that the domestic implementing provisions extend to unregistered companies where required by the Directive.

10. Responsibility for the measures, described in this transposition note, taken to implement the Takeovers Directive lies with the Secretary of State for Trade and Industry.

11. The table below describes the substantive provisions implementing the Takeovers Directive.

Part 24: Takeovers etc: Transposition Measures		
Article	**Objective**	**Implementation**
1	Defines the scope of Directive in terms of transactions and types of company to which it applies ("takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market").	No specific implementing provision necessary.
2	Contains key definitions for the purposes of the Directive (such as, "takeover bid", "offeree company", and "securities").	No specific implementing provision necessary.
3.1	Lays down general principles which Member States shall ensure are adhered to for the purpose of implementing the Directive.	*Section 943(1)* requires that the Panel give effect to the general principles set out at Article 3.1 of the Directive in the exercise of their statutory rule-making duty.
3.2	Provides that Member States may, in ensuring that the minimum requirements laid down by the Directive are adhered to, lay down additional conditions and provisions more stringent than those of the Directive.	No specific implementing provision necessary.
4.1	Requires Member States to designate supervisory authorities (which must act independently of parties to a bid).	This will be achieved by administrative designation of the Takeover Panel as supervisory authority for the purposes of the Directive.
4.2	Lays down jurisdictional rules in relation to	*Section 943(1)* requires that the Panel give

	takeover regulation	effect to the jurisdictional provisions of the Directive in the exercise of their statutory rule-making duty.
4.3	Requires Member States to ensure that persons employed or formerly employed by takeover regulatory authorities are bound by professional secrecy (information covered by this obligation should not be disclosed other than under conditions laid down by national law).	*Section 949* makes it a criminal offence to disclose information provided to the Takeover Panel other than under the circumstances and gateways laid down in *section 948 and Schedule 2*.
4.4	Lays down cooperation obligations in relation to EU takeover and financial markets supervisory authorities.	*Section 950* requires the Takeover Panel to cooperate with EU takeover and financial services regulators. The existing cooperation duties of the Financial Services Authority under section 354 of the Financial Services and Markets Act 2000 are extended to include relevant authorities (section *964*).
4.5	Requires that takeover supervisory authorities be provided with all powers necessary for carrying out their duties and provides that Member States may, provided that the general principles are respected, permit derogation from the rules of the Directive in certain circumstances and grant supervisory authorities the power to grant waivers.	In addition to the rule-making duty at section *943(1)* and rule-making powers at section *943(2)*, the following powers are provided to the Takeover Panel: *Section 945* – power to make rulings *Section 946* – power to give directions *Section 947* - power to require documents and information *Section 952* – power to set down sanctions by rules *Section 954* – power to order compensation in certain circumstances *Section 955* – power to apply to the court for enforcement *Section 960* – power to bring and defend proceedings. *Section 944(1)* authorises the Takeover Panel to provide for derogations and waivers in certain circumstances from rules made under *section 943*.
4.6	Makes provision for certain Member States' powers to be unaffected by the Directive (for instance, designation of judicial or other authorities responsible for dealing with disputes, the circumstances in which parties may bring administrative or judicial proceedings, any capacity of the courts to decline to hear legal proceedings and the liability of supervisory authorities).	*Section 945(2)* provides that a ruling of the Takeover Panel is to have binding effect (subject to provisions in the Panel's rules and any review or appeal). *Section 951* provides for matters relating to reviews of and appeals from Takeover Panel decisions to be contained in the rules made by the Panel. *Section 956* provides that there shall be no action for breach of statutory duty, or any voidness or unenforceability of transactions, as a result of breach of rules made by the Panel. *Section 961* provides for exemption of the Takeover Panel (and those involved in its functions) from liability in damages in certain circumstances related to the regulatory activities of the Panel.

5	Requires that a "mandatory bid rule" is introduced requiring a person acquiring "control" of a company to make a bid to all holders of securities at an equitable price Contains rules related to the calculation of the equitable price.	*Section 943(1)* requires that the Panel give effect to the "mandatory bid" and "equitable price" provisions in the exercise of their statutory rule-making duty.
6	Requires that the decision to make a takeover bid is made public. Contains detailed provision related to the contents of the takeover offer document. Requires that the parties to a bid are obliged to provide supervisory authorities with information related to the bid.	*Section 943(1)* requires that the Panel give effect to the "bid" disclosure and documentation provisions in the exercise of its statutory rule-making duty. *Section 947* provides the Takeover Panel with power to require documents and information.
7	Lays down rules related to the time allowed for acceptance of the takeover bid.	*Section 943(1)* requires that the Panel give effect to the offer "acceptance" period provision in the exercise of its statutory rule-making duty.
8	Requires that takeover bids are made public so as to ensure market transparency. It also provides for the disclosure of bid documentation to shareholders and employees' representatives (or, where there are no such representatives, the employees directly).	*Section 943(1)* requires that the Panel give effect to the bid disclosure provisions in the exercise of their statutory rule-making duty.
9	Imposes obligations on the board of the offeree company, including the obligation not to take action to frustrate the bid without the approval of shareholders at the time of the bid and to draw up and make public a statement containing their views on the effects of implementation of the bid.	*Section 943(1)* requires that the Panel give effect to the provisions relating to the obligations of the board of the offeree company in the exercise of their statutory rule-making duty.
10	Requires that companies shall publish detailed information on their share and control structures, etc. in their annual report and present an explanatory report on such matters to the annual general meeting of shareholders.	*Section 992* (amending Part 7 of the 1985 Act) requires that the relevant information, including necessary explanatory material, is set out in the annual report of companies.
11	"Breakthrough" – This provision overrides, in certain circumstances connected with a takeover, provisions in the articles of companies and contractual arrangements related to restrictions on transfer and voting rights of shares, etc. It does not apply to special shares held by Member States or to cooperatives. This provision may be made optional by Member States for companies under the provisions of article 12.	The right to make these provisions optional for companies is exercised in the implementing provisions. *Sections 966 and 967* define the types of companies, circumstances and mechanisms by which a company may opt-in to "breakthrough". *Section 968* lays down the effect on contractual restrictions overridden by "breakthrough".
12.1	Provides that Member States may make optional the provisions of articles 9(2) and (3) and/or Article 11.	Exercise of this option has been taken only in relation to the provisions of Article 11 (the relevant implementing provisions of which are described above).
12.2 (and 12.4)	Requires, where optional arrangements are in place, that companies have the right to voluntarily opt-in to the provisions of the relevant articles. Such a decision must be	*Section 970* requires that any opting-in decision be communicated to the Takeover Panel without delay. The opting-in resolution passed by the

	communicated to the supervisory authorities and be disclosed.	company must be filed with the Registrar of Companies under section 30.
12.3 (and 12.5)	Permits Member States to provide that the effects of Articles 9(2) and (3) and/or Article 11 only apply on a "reciprocal" basis, i.e. where the takeover bid is made by a company also subject to the effects of the relevant articles. Such restrictions on the application of Articles 9(2) and (3) and Article 11 shall be subject to the authorisation of the general meeting of shareholders of the offeree company.	The Member State option to provide for "reciprocity" has not been exercised.
13	Requires that rules relating to the lapsing or revision of bids, competing bids, disclosure of results of bids and irrevocability of bids be put in place.	*Section 943(1)* requires that the Panel give effect to the requirement that such rules be put in place in the exercise of its statutory rule-making duty.
14	Provides that the Directive shall be without prejudice to various provisions relating to information and consultation of employees and their representatives.	No specific implementing provision necessary.
15	Requires Member States to put in place rules enabling a bidder to compulsorily purchase the shares of minority shareholders following a successful takeover bid ("squeeze-out" rights). The circumstances in which such a right must apply (including time periods and relevant thresholds) and relating to the price that must be paid are set out.	"Squeeze-out" rights were previously contained in the 1985 Act (Part 13A (sections 428-430F)). These have been replaced by Chapter 3 of Part 28 of the Act (necessary amendments to ensure these provisions are consistent with Article 15 have been made).
16	Requires Member States to put in place rules enabling minority shareholders to require a bidder to compulsorily purchase their shares following a successful takeover bid ("sell-out" rights). The circumstances in which such a rule must apply (including time periods and relevant thresholds) and relating to the price that must be paid are set out.	"Sell-out" rights were previously contained in the 1985 Act (Part 13A). These have been replaced by Chapter 3 of Part 28 of the Act (necessary amendments to ensure these provisions are consistent with article 16 have been made).
17	Requires that effective, proportionate and dissuasive sanctions be put in place.	*Sections 952 and 954* provide that the rules made by the Takeover Panel may confer power on the Panel to impose sanctions on those who transgress its rules or order compensation in certain circumstances. *Section 949* makes it an offence to contravene the provisions of section *948* (relating to the restrictions on disclosure of information provided to the Takeover Panel). *Section 953* provides an offence where takeover bid documentation does not comply with Panel rules giving effect to Articles 6.3 and 9.5 of the Directive. Misconduct in relation to takeover activity also needs to be viewed in the wider context of the overall regulatory framework and the protections available to

		shareholders and others. A robust market regulatory regime and company law framework is in place in the UK to investigate and pursue misconduct in relation to takeover activity (for instance, sanctions with stringent sanctions are already in place to deter fraudulent misrepresentation or market abuse).
18	Lays down a Committee procedure whereby the Commission may adopt rules related to the application of Article 6.3 (contents of takeover bid documentation).	No implementing provision necessary (no such rules have been adopted).
19	Requires the EU Commission to establish a Contact Committee to facilitate the harmonised application of the Directive and advise the Commission, if necessary, on any additions or amendments to the Directive.	No implementing provision necessary.
20	Provides for the review of the Directive by the EU Commission five years after its entry into force. Requires that Member States provide the Commission annually with certain information related to takeover bids.	No implementing provision necessary. Such information will be provided to the EU Commission as an administrative process.
21	Requires that the relevant provisions of the Directive be transposed no later than 20 May 2006. Details of transposition measures shall be communicated to the Commission.	No specific implementing provision necessary (NB paragraph 5 above regarding the Takeovers Directive (Interim Implementation) Regulations 2006 which came into force on 20th May 2006). Details of the transposition measures will be communicated to the EU Commission by administrative process.
22	Provides that the Directive enters into force on 20 May 2004	No implementing provision necessary.
23	Addresses the Directive to the Member States.	No implementing provision necessary.