Draft Order laid before Parliament under sections 654(3) and 1290 of the Companies Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No. 0000

COMPANIES

The Companies (Reduction of Share Capital) Order 2008

Made - - - -	***
Coming into force - -	*1st October 2008*

In accordance with sections 654(3), 1290 and 1292(3) of the Companies Act 2006(**a**), a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 643(3), 654 and 1167 of the Companies Act 2006, makes the following Order:

1.—(1) This Order may be cited as the Companies (Reduction of Share Capital) Order 2008 and comes into force on 1st October 2008.

(2) In this Order, "the Act" means the Companies Act 2006.

2. A solvency statement under section 643 of the Act must—

(a) be in writing,

(b) indicate that it is a solvency statement for the purposes of section 642 of the Act, and

(c) be signed by each of the directors.

3.—(1) If an unlimited company reduces its share capital—

(a) the prohibition in section 654(1) of the Act does not apply, and

(b) a reserve arising from the reduction is to be treated for the purposes of Part 23 of the Act as a realised profit.

(2) If a private company limited by shares reduces its share capital and the reduction is supported by a solvency statement but has not been the subject of an application to the court for an order confirming it—

(a) the prohibition in section 654(1) of the Act does not apply, and

(b) a reserve arising from the reduction is to be treated for the purposes of Part 23 of the Act as a realised profit.

(3) If a limited company having a share capital reduces its share capital and the reduction is confirmed by order of the court—

(a) the prohibition in section 654(1) of the Act does not apply, and

(**a**) 2006 c. 46.

(b) a reserve arising from the reduction is to be treated for the purposes of Part 23 of the Act as a realised profit unless the court orders otherwise under section 648(1) of the Act.

(4) This article is without prejudice to any contrary provision of—

(a) an order of, or undertaking given to, the court,

(b) the resolution for, or any other resolution relevant to, the reduction of share capital, or

(c) the company's memorandum or articles of association.

Name
Parliamentary Under Secretary of State,
Department for Business, Enterprise and Regulatory Reform

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes the form in which a solvency statement must be made when a private company proposes to reduce its share capital in reliance on the statement without getting a court order.

The Order also provides that when a company reduces its share capital, the prohibition on distribution in section 654(1) of the Companies Act 2006 does not apply unless, where the reduction is confirmed by court order, the court orders that it is not distributable. That, however, does not affect the operation of anything to the contrary in—

an order of, or undertaking to, the court,

the resolution for, or any other resolution relevant to, the reduction, or

the company's memorandum or articles.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available electronically at www.berr.gov.uk and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. Copies have also been placed in the libraries of both Houses of Parliament.

£3.00

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E2558 6/2008 182558T 19585