Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

COMPANIES

The Takeovers (Amendment) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Takeovers (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

Amendments to the Companies Act 2006

2. The Companies Act 2006(**b**) is amended as follows.

3. In section 943—

(a) for subsection (1), substitute—

"(1) The Panel must make rules—

(a) giving effect to the general principles in Part 1 of Schedule 1C, and

(b) in accordance with Part 2 of that Schedule.";

(b) after subsection (1), insert—

"(1A) Rules must specify the percentage of voting rights that gives a person control of a company for the purposes of this Chapter and how it is to be calculated.";

(c) in subsection (7), for "of the Takeovers Directive" substitute "given by paragraph 20(1) of Schedule 1C";

(d) omit subsection (8).

(**a**) 2018 c.16.
(**b**) 2006 c.46.

4. In section 948(**a**), in subsection (7) omit paragraphs (b) and (c).

5. In section 950(**b**), omit subsection (1)(b).

6. In section 953, in subsection (9)—

(a) in the definition of "offer document", for "giving effect to Article 6.2 of the Takeovers Directive" substitute "made in accordance with paragraph 12(1) to (3) of Schedule 1C;";

(b) for the definition of "offer document rules", substitute—

""offer document rules" means rules under section 943(1) designated as rules made in accordance with paragraph 12(4) of Schedule 1C;";

(c) in the definition of "response document", for "giving effect to Article 9.5 of that Directive" substitute "made in accordance with paragraph 18 of Schedule 1C;";

(d) for the definition of "response document rules", substitute—

""response document rules" means rules under section 943(1) designated as rules made in accordance with paragraph 18(1) of Schedule 1C;";

(e) in the definition of "takeover bid", for "same meaning as in that Directive" substitute "meaning given by paragraph 20(1) of Schedule 1C;".

7.—(1) Section 966 is amended as follows.

(2) In subsection (1), for "three" substitute "five".

(3) In subsection (2), before "regulated market" insert "UK".

(4) For subsection (3) substitute—

"(3) The second condition is that the company's articles of association do not contain any restrictions on the transfer of shares or, if they do contain any such restrictions, provide that they are not to apply to—

(a) transfers to the offeror, or at the offeror's direction to another person, during the offer period, or

(b) transfers to any person at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.

(3A) The third condition is that the company's articles of association—

(a) do not contain any restrictions on rights to vote at a general meeting of the company, or

(b) if they do contain any such restrictions, provide that they are not to have effect on rights to vote at a general meeting of the company that—

(i) decides whether to take any action which might result in the frustration of the takeover bid, or

(ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company,

unless the restrictions are compensated for by specific pecuniary advantages.

(3B) The fourth condition is that the company's articles of association do not contain any other provision which would be incompatible with the requirements of subsection (3C).

(3C) Those requirements are—

(a) multiple-vote shares are to carry only one vote each at a general meeting of the company that decides whether to take any action which might result in the frustration of the takeover bid,

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(**a**) Section 948(7) was amended by the Financial Services Act 2012 (c. 21) Schedule 18, Part 2, paragraphs 110 and 118.
(**b**) Section 950 was amended by the Financial Services Act 2012 (c. 21) Schedule 18, Part 2, paragraphs 110 and 119.

(b) multiple-vote shares are to carry only one vote each at a general meeting of the company which—

(i) is the first such meeting to be held after the end of the offer period,

(ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company, and

(iii) is called at the offeror's request under section 969 in order to amend the company's articles of association or to appoint or remove members of the board of directors, and

(c) at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company, shareholders are not to have any extraordinary rights to appoint or remove members of the board of directors.

(3D) The references in subsections (3A)(b) and (3C)(a) to voting at a general meeting of the company that decides whether to take any action which might result in the frustration of the takeover bid includes a reference to voting on a written resolution concerned with that question.

(3E) For the purposes of subsections (3A)(b)(i) and (3C)(a), action which might result in the frustration of the takeover bid is any action of that kind specified in rules under section 943(1) made in accordance with paragraphs 17 or 18 of Schedule 1C.

(3F) The references in subsections (3), (3A) and (3C) to voting shares in the company do not include—

(a) debentures, or

(b) shares that, under the company's articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only where specified pecuniary advantages are not provided).

(3G) In subsection (3C), "multiple-vote shares" means shares included in a distinct and separate class and carrying more than one vote each.".

(5) In subsection (4), for "third" substitute "fifth".

(6) Omit subsection (6).

8. In section 967—

(a) in subsection (3), for "second and third" substitute "second, third, fourth and fifth;

(b) in subsection (4), before "regulated market" insert "UK";

(c) in subsection (7), for "second condition" substitute "second, third or fourth condition".

9. In section 968(5) for "giving effect to Article 9 of the Takeovers Directive" substitute "made in accordance with paragraph 17 or 18 of Schedule 1C".

10. In section 970—

(a) in subsection (1), omit paragraph (b) and the "and" after paragraph (a);

(b) in subsection (2), omit the words from "and," to the end.

11. In section 971(1)—

(a) omit the definitions of "offeror" and "takeover bid";

(b) at the appropriate place, insert—

""offeror", in relation to a takeover bid, means the person making the bid;";

(c) at the appropriate place, insert—

""takeover bid" has the meaning given by paragraph 20(1) of Schedule 1C;";

(d) in the definition of "offer period", for the words from "giving effect to Article 7.1" to the end substitute "made in accordance with paragraph 13 of Schedule 1C;";

(e) omit the definition of "the Takeovers Directive".

12. In section 978(1)(c)(ii), for "an EEA State" substitute "the United Kingdom".

13. In section 980(3)(**a**), for the words from "that give effect" to the end substitute "made in accordance with paragraph 13 or 14 of Schedule 1C".

14. After Schedule 1B, insert the Schedule 1C set out in the Schedule to these Regulations.

15. In Schedule 2(**b**), in Part 2, in Section (E) (General), omit paragraph 5.

16. In Schedule 8(**c**)—

(a) in the entry for "company", after the entry in relation to Part 26, insert—

"—in Schedule 1C (see Chapter 1 of Part 28)	paragraph 21 of Schedule 1C";

(b) in the entry for "offeror", before the entry in relation to Chapter 2 of Part 28, insert—

"—in Schedule 1C (see Chapter 1 of Part 28)	paragraph 20(1) of Schedule 1C";

(c) for the entry for "takeover bid (in Chapter 2 of Part 28)" substitute—

"takeover bid	
—in section 943	section 943(7)
—in Schedule 1C	paragraph 20(1) of Schedule 1C
—in section 953	section 953(9)
—in Chapter 2 of Part 28	section 971(1)";

(d) omit the entry for "the Takeovers Directive";

(e) in the entry for "voting rights", before the entry in relation to Chapter 2 of Part 28, insert—

"—in Schedule 1C (see Chapter 1 of Part 28)	paragraph 20(1) of Schedule 1C".

Amendments to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

17. The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(**d**) are amended as follows.

18. In Schedule 7, in Part 6, in paragraph 13(6)—

(a) in the definition of "takeover bid", for "the Takeovers Directive" substitute "paragraph 20(1) of Schedule 1C to the Companies Act 2006(**e**)";

(b) omit the definition of "the Takeovers Directive".

(**a**) There is an amending instrument but it is not relevant.
(**b**) The original Schedule 2 was substituted by a new Schedule 2 containing new Part headings by S.I. 2009/1208.
(**c**) There are amending instruments but they are not relevant.
(**d**) S.I. 2008/410.
(**e**) 2006 c.46.

Amendment to the Unregistered Companies Regulations 2009

19. The Unregistered Companies Regulations 2009(**a**) are amended as follows.

20. In Schedule 1, in paragraph 14, at the beginning insert—

"(A1) Schedule 1C to the Companies Act 2006 applies to unregistered companies.".

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy.

Name
Parliamentary Under Secretary of State
Date Department for Business, Energy and Industrial Strategy

SCHEDULE

Regulation 14

Schedule to be inserted after Schedule 1B to the Companies Act 2006

"SCHEDULE 1C

Section 943

Rules of the Takeover Panel: general principles and other provision

PART 1

General principles

1.—(1) All holders of the securities of an offeree company of the same class must be afforded equivalent treatment.

(2) If a person acquires control of a company, the other holders of securities must be protected.

2.—(1) The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the takeover bid.

(2) Where it advises the holders of securities, the board of directors of the offeree company must give its views on the effects of implementation of the takeover bid on—

(a) employment,

(b) conditions of employment, and

(c) the locations of the company's places of business.

3. The board of directors of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the takeover bid.

4. False markets must not be created in the securities of—

(a) the offeree company,

(b) if the offeror is a company, that company, or

(c) any other company concerned by the takeover bid,

(**a**) S.I. 2009/2436.

in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.

5. An offeror must announce a takeover bid only after—

(a) ensuring that the offeror can fulfil in full any cash consideration, if such is offered, and

(b) taking all reasonable measures to secure the implementation of any other type of consideration.

6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a takeover bid for its securities.

PART 2

Other provision

Protection of minority shareholders, the mandatory takeover bid and the equitable price

7.—(1) Rules must ensure that a person ("P") is required to make a takeover bid ("a mandatory takeover bid") where—

(a) P, or any person acting in concert with P, has acquired securities in a company, and

(b) the acquired securities, when added to any existing securities held by P or by persons acting in concert with P, directly or indirectly give P control of that company.

(2) Rules must ensure that the mandatory takeover bid must be addressed at the earliest opportunity to all of the holders of those securities for all their holdings at the equitable price.

(3) Rules must ensure that where control has been acquired following a voluntary takeover bid to all the holders of securities for all their holdings, the obligation referred to in sub-paragraph (1) to make a mandatory takeover bid no longer applies.

8.—(1) For the purposes of paragraph 7, "the equitable price" is the highest price paid for the same securities by the offeror, or by persons acting in concert with the offeror, over a period, determined by rules, of not less than 6 and not more than 12 months before the mandatory takeover bid is announced.

(2) Rules must ensure that if, after the mandatory takeover bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with the offeror purchases securities at a price higher than the offer price, the offeror must increase the offer consideration so that it is not less than the highest price paid for the securities so acquired.

(3) Rules may confer power on the Panel to adjust the equitable price in circumstances and in accordance with criteria that are clearly determined.

(4) Rules must ensure that any decision by the Panel to adjust the equitable price must be substantiated and made public.

9.—(1) Rules must ensure that the offeror may offer by way of consideration for the securities which are the subject of the mandatory takeover bid—

(a) securities,

(b) cash, or

(c) a combination of both.

(2) Rules must ensure that cash must be offered—

(a) as an alternative where the consideration offered does not consist of liquid securities admitted to trading on a UK regulated market, and

(b) at least as an alternative where the securities purchased for cash over a relevant period by the offeror or by persons acting in concert with the offeror, taken together, carry 5% or more of the voting rights in the offeree company.

(3) "A relevant period" is a period—

(a) beginning at the same time as the period determined in accordance with paragraph 8(1), and

(b) ending when the offer closes for acceptance.

(4) Rules may require that cash must be offered, at least as an alternative, in all cases.

10. Any rules that make provision to protect the interests of the holders of securities that goes beyond the provision referred to in paragraphs 7 to 9 must not hinder the normal course of a takeover bid.

Information concerning takeover bids

11.—(1) Rules must ensure that a decision to make a takeover bid must be made public without delay and the Panel must be informed of the bid.

(2) Rules may require that the Panel is informed before such a decision is made public.

(3) Rules must ensure that, as soon as the takeover bid has been made public, the boards of directors of the offeree company and of the offeror must inform—

(a) the representatives of their respective employees, or

(b) where there are no such representatives, the employees themselves.

12.—(1) Rules must ensure that an offeror must draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the takeover bid.

(2) Rules must ensure that, before the offer document is made public, the offeror must provide a copy to the Panel.

(3) Rules must ensure that, when the offer document is made public, the boards of directors of the offeree company and of the offeror must communicate it—

(a) to the representatives of their respective employees, or

(b) where there are no such representatives, to the employees themselves.

(4) Rules must ensure that the offer document must state at least—

(a) the terms of the takeover bid,

(b) the identity of the offeror and, where the offeror is a company, the company's type, name and registered office,

(c) the securities or, where appropriate, the class or classes of securities for which the takeover bid is made,

(d) the consideration offered for each security or class of securities and, in the case of a mandatory takeover bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid,

(e) the compensation offered for the rights which might be removed as a result of a company's opting-in resolution under Chapter 2, with particulars of the way in which that compensation is to be paid and the method employed in determining it,

(f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire,

(g) details of any existing holdings of the offeror, and of any person acting in concert with the offeror, in the offeree company,

(h) all the conditions to which the takeover bid is subject,

(i) the offeror's intentions with regard to the future business of the offeree company,

(j) the offeror's intentions with regard to the safeguarding of the jobs of the employees and management of the offeree company, including any material change in the conditions of employment,

(k) the offeror's strategic plans for the offeree company, and their likely repercussions on employment and the locations of the company's places of business,

(l) if the offeror is a company and in so far as it is affected by the takeover bid—

(i) the offeror's intentions with regard to its future business,

(ii) the offeror's intentions with regard to the safeguarding of the jobs of its employees and management, including any material change in the conditions of employment, and

(iii) the offeror's strategic plans for itself, and their likely repercussions on employment and the locations of its places of business,

(m) the time allowed for acceptance of the takeover bid,

(n) where the consideration offered includes securities of any kind, information concerning those securities,

(o) information concerning the financing for the takeover bid,

(p) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, the types, names, registered offices and relationships with the offeror and, where possible, with the offeree company, and

(q) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the takeover bid and the competent courts.

Time allowed for acceptance

13.—(1) Rules must ensure that, subject to any provision made in accordance with paragraph 14, the time allowed for the acceptance of a takeover bid must not be less than the period of two weeks nor more than the period of 10 weeks beginning with the day after the date of publication of the offer document.

(2) Rules may provide that the maximum period allowed for acceptance of a takeover bid may be extended on the condition that the offeror gives the Takeover Panel at least two weeks' notice of the offeror's intention to close the takeover bid.

14.—(1) Rules may contain provision changing the time allowed for the acceptance of a takeover bid in specific cases.

(2) Rules may confer power on the Panel to grant a derogation from the time allowed for the acceptance of a takeover bid in order to allow the offeree company to call a general meeting of the company to consider the takeover bid.

Disclosure

15. Rules must ensure that a takeover bid must be made public in such a way as to ensure market transparency and integrity for the securities of—

(a) the offeree company,

(b) if the offeror is a company, that company, or

(c) any other company affected by the takeover bid,

in particular in order to prevent the publication or dissemination of false or misleading information.

16. Rules must ensure that all information and documents required by provision made in accordance with paragraphs 11 and 12 must be disclosed in such a manner as to ensure that they are both readily and promptly available—

(a) to the holders of securities admitted to trading on a UK regulated market who are located in the United Kingdom, and

(b) to the representatives of the employees of the offeree company and of the offeror, or where there are no such representatives, to the employees themselves.

Obligations of the board of directors of the offeree company

17.—(1) Rules must ensure that, during the relevant period, the board of directors of the offeree company must obtain the prior authorisation of a general meeting of the company given for this purpose—

(a) before taking any action, other than seeking alternative takeover bids, which may result in the frustration of the bid, and

(b) in particular, before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.

(2) "The relevant period"—

(a) begins when the board of directors of the offeree company receives the information that a decision to make a takeover bid has been made public, or at such earlier stage as rules may determine, and

(b) ends when the result of the bid is made public or the bid lapses.

(3) Rules must ensure that, with regard to decisions taken before the beginning of the relevant period and not yet partly or fully implemented, a general meeting of the company must approve or confirm any decision—

(a) which does not form part of the normal course of the company's business, and

(b) the implementation of which may result in the frustration of the takeover bid.

(4) For the purposes of this paragraph, where a company has a two-tier board structure, "board of directors" means both the management board and the supervisory board.

18.—(1) Rules must ensure that the board of directors of the offeree company must draw up and make public a document setting out its opinion of the takeover bid and the reasons for the opinion, including its views on—

(a) the effects of implementation of the takeover bid on all the company's interests and specifically employment, and

(b) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer document in accordance with paragraph 12(4)(k).

(2) Rules must ensure that the board of directors of the offeree company must at the same time communicate that opinion—

(a) to the representatives of its employees, or

(b) where there are no such representatives, to the employees themselves.

(3) Rules must ensure that, where the board of directors of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the takeover bid on employment, that opinion must be appended to the document.

Other rules applicable to the conduct of takeover bids

19. Rules must make provision governing the conduct of takeover bids which must address at least—

(a) the lapsing of takeover bids,

(b) the revision of takeover bids,

(c) competing takeover bids,

(d) the disclosure of the results of takeover bids, and

(e) the irrevocability of takeover bids and the conditions permitted.

Interpretation

20.—(1) In this Schedule—

"offer document" means a document required to be published by rules made in accordance with paragraph 12;

"offeree company" means a company, the securities of which are the subject of a takeover bid;

"offeror", in relation to a takeover bid, means the person making the bid;

"rules" means rules made by the Panel under section 943(1);

"securities" means transferable securities carrying voting rights in a company;

"takeover bid" means a public offer made to the holders of the securities of a company to acquire some or all of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of that company, but does not include cases where the offer is made by the company itself;

"voting rights" means rights to vote at general meetings of the company in question.

(2) For the purposes of this Schedule, securities are of one class if the rights attached to them are in all respects uniform; and for that purpose the rights attached to securities are not regarded as different from those attached to other securities by reason only that they do not carry the same rights to dividends in the twelve months immediately following their allotment.

(3) In this Schedule, "persons acting in concert" means persons who co-operate with the offeror or the offeree company on the basis of an agreement or understanding aimed at—

(a) acquiring control of the offeree company, or

(b) frustrating the successful outcome of a takeover bid.

(4) For the purposes of this Schedule, where a person ("A") is a subsidiary undertaking of another person ("B") within the meaning of section 420 of the Financial Services and Markets Act 2000(**a**) (but disregarding subsections (2)(b) and (3) of that section, and subsections (2)(c) and (4)(b) of section 1162 of the Companies Act 2006)—

(a) A is deemed to be acting in concert with B and with any other subsidiary undertakings of B, and

(b) B and those subsidiary undertakings are deemed to be acting in concert with A.

21.—(1) In this Schedule, other than in the listed provisions, "company" means a company that has securities admitted to trading on a UK regulated market.

(2) The listed provisions are—

paragraph 4(b) and (c);

paragraph 12(4)(b), (l) and (p);

paragraph 15(b) and (c).

(3) Section 1 (meaning of "company") does not apply for the purposes of the listed provisions."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

(**a**) 2000 c.8. Section 420(1) was amended by the Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Schedule 1(2), paragraph 212(1).

These Regulations make amendments to Part 28 of the Companies Act 2006 which relates to company takeovers. The Schedule to these Regulations contains a new Schedule to be added to the Companies Act 2006.

An impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

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