Draft Regulations laid before Parliament under sections 784 and 1290 of the Companies Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

COMPANIES

The Uncertificated Securities (Amendment) Regulations 2013

Made - - - -	***
Coming into force - -	*1st April 2013*

The Treasury, in exercise of the powers conferred on them by sections 784, 785, 788 and 1292 of the Companies Act 2006(**a**), make the following Regulations.

In accordance with section 789 of that Act, the Treasury have carried out such consultation as appeared to them to be appropriate.

In accordance with sections 784(3) and 1290 of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Uncertificated Securities (Amendment) Regulations 2013 and come into force on 1st April 2013.

Amendment of the Uncertificated Securities Regulations 2001

2.—(1) The Uncertificated Securities Regulations 2001(**b**) are amended as follows.

(2) Regulation 3(1) (interpretation) is amended as follows—

(a) omit the definition of "designated agency";

(b) in the definition of "Operator", for "Treasury" (in both places) substitute "Bank of England".

(3) Regulation 4 (applications for approval) is amended as follows—

(a) in paragraph (1) for "Treasury for their" substitute "Bank of England for its";

(b) in paragraph (2) for "Treasury" (in both places) substitute "Bank of England";

(c) in paragraph (3) for the words from "Treasury" to the end substitute "Bank of England may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.";

(**a**) 2006 c.46; section 785 was amended by the Financial Services Act 2012 (c.21), section 112.
(**b**) S.I. 2001/3755; relevant amending instruments are S.I. 2003/1398, 2006/3221, 2010/2628 and 2012/917.

(d) in paragraph (4) for the words from "Treasury" to the end substitute "Bank of England requires under this regulation shall, if it so requires, be provided in such form, or verified in such manner, as it may direct.";

(e) in paragraph (5) for "Treasury" substitute "Bank of England".

(4) Regulation 5 (grant and refusal of approval) is amended as follows—

(a) in paragraph (1)—

(i) for "Treasury" (in both places) substitute "Bank of England";

(ii) for "they" substitute "it";

(b) in paragraph (2)—

(i) for "Treasury" substitute "Bank of England";

(ii) for "they consider" substitute "it considers".

(5) Regulation 6 (fees charged by the Treasury) is amended as follows—

(a) in the heading, for "Treasury" substitute "Bank of England";

(b) in paragraphs (1) and (2), for "Treasury" substitute "Bank of England";

(c) in paragraph (3)—

(i) for "Treasury" substitute "Bank of England";

(ii) in sub-paragraph (b), for "themselves" substitute "itself";

(d) in paragraph (4)—

(i) for "Treasury" substitute "Bank of England";

(ii) omit sub-paragraph (b);

(e) in sub-paragraph (c), omit the words from "or in preparing" to "so expended";

(f) in paragraph (5), omit sub-paragraph (b) and the "and" that precedes it;

(g) for paragraph (6) substitute—

"(6) Any fee which is owed to the Bank of England under this regulation may be recovered as a debt due to the Bank of England.";

(h) omit paragraph (7).

(6) Regulation 7 (withdrawal of approval) is amended as follows—

(a) in paragraph (1), for "Treasury" substitute "Bank of England";

(b) in paragraph (2)—

(i) for "Treasury" substitute "Bank of England";

(ii) for "they" substitute "it";

(c) in paragraph (6), for "Treasury think" substitute "Bank of England thinks".

(7) In regulation 8 (compliance orders and directions), for "Treasury" (in each place) substitute "Bank of England".

(8) Regulation 9 (injunctions and restitution orders) is amended as follows—

(a) for "Treasury" (in each place) substitute "Bank of England";

(b) in paragraph (3), for "them" substitute "it".

(9) Regulation 10 (provision of information by Operators) is amended as follows—

(a) for paragraph (1) substitute—

"(1) The Bank of England may, in writing, require an Operator to give it such information or documents as it may specify.";

(b) for paragraph (2) substitute—

"(2) The Bank of England may also, in writing, require an Operator to give it, at such times or in respect of such periods as it may specify, such information or documents relating to that Operator as it may specify.";

(c) in paragraph (3)—

(i) after "information" insert "or documents";

(ii) for "Treasury" substitute "Bank of England";

(iii) for "their" substitute "its";

(d) in paragraphs (4) and (5) for "Treasury" substitute "Bank of England".

(10) For regulation 11 substitute—

"Reports by skilled persons

11A.—(1) This regulation applies where the Bank of England has required or could require an Operator to provide information or produce documents under regulation 10.

(2) The Bank of England may—

(a) by notice in writing given to the Operator, require the Operator to provide it with a report on any matter relating to such information or documents, or

(b) itself appoint a person to provide it with a report on any matter relating to such information or documents.

(3) When acting under paragraph (2)(a), the Bank of England may require the report to be in such form as may be specified in the notice.

(4) The Bank of England must give notice of an appointment under paragraph (2)(b) to the Operator.

(5) The person appointed to make a report—

(a) must be a person appearing to the Bank of England to have the skills necessary to make a report on the matter concerned, and

(b) where the appointment is to be made by the Operator, must be a person nominated or approved by the Bank of England.

(6) It is the duty of—

(a) the Operator, and

(b) any person who is providing (or who has at any time provided) services to the Operator in relation to the matter concerned,

to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.

(7) The obligation imposed by paragraph (6) is enforceable, on the application of the Bank of England, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(8) The Bank of England may make rules providing for the expenses incurred by it in relation to an appointment under sub-paragraph (2)(b) to be payable as a fee by the Operator concerned.

(9) Any fee which is owed to the Bank of England under rules made pursuant to paragraph (8) may be recovered as a debt due to the Bank of England.

Appointment of persons to carry out general investigations etc.

11B.—(1) If it appears to the Bank of England that it is desirable in the interests of the exercise of its functions under these Regulations, the Bank of England may appoint one or more competent persons ("the investigator") to conduct an investigation on its behalf into—

(a) the nature, conduct or state of the business of an Operator;

(b) a particular aspect of that business; or

(c) the ownership or control of an Operator.

(2) An investigator may require the Operator who is the subject of the investigation—

(a) to attend before the investigator at a specified time and place to answer questions; or

(b) otherwise to provide such information as the investigator may require.

(3) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.

(4) A requirement under paragraph (2) or (3) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant for the purposes of the investigation.".

(11) In regulation 12 (international obligations), for "designated agency" (in each place) substitute "Bank of England".

(12) In regulation 13 (prevention of restrictive practices)—

(a) for the heading substitute "Prevention of excessive regulatory provision";

(b) for "restrictive practices" substitute "excessive regulatory provision".

(13) In paragraph 3 of Schedule 1 (promotion and maintenance of standards), for "Treasury" substitute "Bank of England".

(14) For Schedule 2 (prevention of restrictive practices), substitute the Schedule set out in the Schedule to these Regulations.

(15) Schedule 3 (procedure for refusal or withdrawal of approval as an Operator, or for giving directions, etc.) is amended as follows—

(a) for paragraph 1, substitute—

"**1.** Before—

(a) refusing an application for approval as an Operator made under regulation 4 (whether or not pursuant to paragraph 1(1) of Schedule 2);

(b) withdrawing an Operator's approval under regulation 7(2); or

(c) giving a direction under regulation 8,

the Bank of England must give written notice of its intention to do so to the Operator.";

(b) in paragraph 2, for sub-paragraph (a), substitute—

"(a) state why the Bank of England intends to refuse the application, withdraw the approval or give the direction; and";

(c) for paragraph 3, substitute—

"**3.** Before the end of the period for making representations, the Operator may make representations to the Bank of England.";

(d) for paragraph 4, substitute—

"**4.** The period for making representations is such period as is specified in the notice (which may, in any particular case, be extended by the Bank of England).";

(e) in paragraph 5—

(i) after "the approval," insert "or";

(ii) omit ", or exercise the power in question,";

(iii) for "Treasury shall" substitute "Bank of England must";

(f) for paragraph 6, substitute—

"**6.**—(1) When the Bank of England has decided whether to—

(a) refuse the application;

(b) withdraw the approval; or

(c) give the direction;

it must give the Operator written notice of its decision.".

(g) paragraph 7 is amended as follows—

(i) for "Treasury consider it essential" substitute "Bank of England reasonably considers it necessary".

(ii) for "they" substitute "it", and

(iii) in sub-paragraph (b), for "Treasury have", substitute "Bank of England has".

(h) for paragraph 8, substitute—

"**8.** If the Bank of England has, in relation to a particular matter, followed the procedure set out in paragraphs 1 to 5, it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under paragraph 1.".

Transitional provision

3. Any application for approval under regulation 4 of the Uncertificated Securities Regulations 2001 that has been made, but has not been determined, before the commencement of these Regulations is to be determined as if these Regulations were not in force.

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 2(14)

The following Schedule is substituted for Schedule 2 to the Uncertificated Securities Regulations 2001—

"SCHEDULE 2

Regulation 13

PREVENTION OF EXCESSIVE REGULATORY PROVISION

Refusal of approval on ground of excessive regulatory provision

1.—(1) The Bank of England must not approve a person as an Operator of a relevant system if it appears to it that a proposed regulatory provision of that person in connection with the relevant system will impose an excessive requirement on the persons affected (directly or indirectly) by it.

(2) Expressions used in sub-paragraph (1) that are defined for the purposes of paragraph 2 (power of the Bank of England to disallow excessive regulatory provision) have the same meaning as in that paragraph.

Power of the Bank of England to disallow excessive regulatory provision

2.—(1) This paragraph applies where an Operator proposes to make any regulatory provision in connection with its business as an Operator of a relevant system.

(2) If it appears to the Bank of England—

(a) that the proposed provision will impose a requirement on persons affected (directly or indirectly) by it, and

(b) that the requirement is excessive,

the Bank of England may direct that the proposed provision must not be made.

(3) A requirement is excessive if—

(a) it is not required under EU law or any enactment or rule of law in the United Kingdom, and

(b) either—

(i) it is not justified as pursuing a reasonable regulatory objective, or

(ii) it is disproportionate to the regulatory objective to be achieved.

(4) In considering whether a requirement is excessive the Authority must have regard to all the relevant circumstances including—

(a) the effect of existing legal and other requirements,

(b) the global character of financial services,

(c) the desirability of fostering innovation, and

(b) the impact of the proposed provision on market confidence.

(5) In this paragraph "requirement" includes any obligation or burden.

(6) Any provision made in contravention of a direction under this paragraph is of no effect.

Duty to notify proposal to make regulatory provision

3.—(1) An Operator that proposes to make any regulatory provision must give written notice of the proposal to the Bank of England without delay.

(2) The Bank of England may by rules—

(a) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in sub-paragraph (1) does not apply, or

(b) provide that the duty applies only to such descriptions of regulatory provision or in such circumstances as the rules specify.

(3) The Bank of England may also by rules—

(a) make provision as to the form and contents of the notice required, and

(b) require the Operator to provide such information relating to the proposal as may be specified in the rules or as the Bank of England may reasonably require.

Restriction on making provision before the Bank of England decides whether to act

4.—(1) Where notice of a proposal to make regulatory provision is required under paragraph 3, the provision must not be made—

(a) before that notice is given, or

(b) subject to sub-paragraph (4)(a), before the end of the initial period.

(2) The initial period is—

(a) the period of 30 days beginning with the day upon which the Bank of England receives notice of the proposal, or

(b) if any consultation period announced by the Operator in relation to the proposal ends after that 30-day period, the end of the consultation period.

(3) If, before the end of the initial period the Bank of England notifies the Operator that it is calling in the proposal, the provisions of paragraph 5 (consideration by the Bank of England whether to disallow proposed provision) apply as to when the provision may be made.

(4) If—

(a) before the end of the initial period the Bank of England notifies the Operator that it is not calling in the proposal, or

(b) the initial period ends without the Bank of England having notified the Operator that it is calling in the proposal,

the Operator may then make the proposed provision.

(5) Any provision made in contravention of this paragraph is of no effect.

Consideration by the Bank of England whether to disallow proposed provision

5.—(1) This paragraph applies where the Bank of England notifies an Operator that it is calling in a proposal to make regulatory provision.

(2) The Bank of England must publish a notice—

(a) giving details of the proposed provision,

(b) stating that it has called in the proposal in order to consider whether to disallow it, and

(c) specifying a period during which representations with respect to that question may be made to it.

(3) The Bank of England may extend the period for making representations.

(4) The Bank of England must notify the Operator of its decision whether to disallow the provision not later than 30 days after the end of the period for making representations, and must publish the decision and the reasons for it.

(5) The Operator must not make the provision unless and until—

(a) the Bank of England notifies the Operator of its decision not to disallow the provision, or

(b) the 30-day period specified in sub-paragraph (4) ends without the Bank of England having notified the Operator of any decision.

(6) If the Bank of England notifies the Operator of its decision to disallow the provision and that decision is questioned in legal proceedings—

(a) the Operator must not make the provision until those proceedings, and any proceedings on appeal, are finally determined,

(b) if the Bank of England's decision is quashed and the matter is remitted to it for reconsideration, the court may give directions as to the period within which the Bank of England is to complete its reconsideration, and

(c) the Operator must not make the provision until—

(i) the Bank of England notifies it of its decision on reconsideration not to disallow the provision, or

(ii) the period specified by the court ends without the Bank of England having notified any decision.

(7) Any provision made in contravention of sub-paragraph (5) or (6) is of no effect.

Power to disallow excessive regulatory provision: supplementary

6.—(1) In paragraphs 2 to 5 —

(a) "regulatory provision" means any rule, arrangements, guidance, policy or practice, and

(b) references to making provision shall be read accordingly as including, as the case may require, making rules, issuing guidance, entering into arrangements or adopting a policy or practice.

(2) For the purposes of those paragraphs a variation of a proposal is treated as new proposal.".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Uncertificated Securities Regulations 2001 (S.I. 2001/3755) ("the 2001 Regulations"). The 2001 Regulations enable title to securities to be transferred without a written instrument and make provision in respect of the approval and regulation of operators of

"relevant systems", i.e. computer-based systems that allow for title for units of securities to be evidenced and transferred without a written instrument.

The purpose of these Regulations is to transfer responsibility for the approval and regulation of operators of relevant systems from the Treasury to the Bank of England. These Regulations also provide the Bank of England with new powers to require reports to be produced by skilled persons in respect of operators of relevant systems and to appoint investigators for the purpose of making inquiries about operators of relevant systems in appropriate cases.

These Regulations also substitute a new Schedule 2 to the 2001 Regulations in order to replace provision regarding the prevention of restrictive practices with provision for the purpose of preventing operators of relevant systems from adopting and maintaining excessive regulatory provision. As a result of the substitution, operators of relevant systems will now be subject to the Competition Act 1998 without exemption and their rules and practices will be subject to the Bank of England's ongoing scrutiny.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from, Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on http://www.hm-treasury.gov.uk/ and is published alongside the Regulations on http://www.legislation.gov.uk/.

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