Draft Regulations laid before Parliament under sections 737 and 1290 of the Companies Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

COMPANIES

The Companies Act 2006 (Amendment of Part 18) Regulations 2013

Made - - - -	*2013*
Coming into force - -	*30th April 2013*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 737 of the Companies Act 2006(**1**).

In accordance with sections 737(4) and 1290 of that Act, a draft of these Regulations has been laid before Parliament and approved by a resolution of each house of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Companies Act 2006 (Amendment of Part 18) Regulations 2013.

(2) They come into force on 30th April 2013.

Interpretation

2. In these Regulations, "the Act" means the Companies Act 2006.

Company to be allowed to pay for own shares by instalments

3. In section 691 of the Act (payment of purchase of own shares), after subsection (2) insert—

"(3) But subsection (2) does not apply in a case where a private limited company is purchasing shares for the purposes of or pursuant to an employees' share scheme.".

Financing purchase of own shares

4.—(1) Section 692 of the Act (financing of purchase of own shares) is amended as follows.

(2) For subsection (1) substitute—

(**1**) 2006 c.46.

"(1) A private limited company may purchase its own shares—

(a) out of capital in accordance with Chapter 5, and

(b) with cash (if authorised to do so by its articles) up to an amount in a financial year not exceeding the lower of—

(i) £15,000, or

(ii) the value of 5% of its share capital.

(1A) If the share capital of the company is not denominated in sterling, the value in sterling of the share capital shall be calculated for the purposes of subsection (1)(b)(ii) at an appropriate spot rate of exchange.

(1B) The rate must be a rate prevailing on a day specified in the resolution authorising the purchase of the shares.".

(3) In subsection (2) for "Subject to that" substitute "Subject to subsection (1)".

Authority for off-market purchase

5. In each of the following provisions of the Act, omit the word "special"—

(a) subsections (2)(a) and (b) and (4) of section 694 (shareholder authorisation required for contract for off-market purchase of company's own shares),

(b) subsections (2) and (3) of section 697 (shareholder authorisation required for variation of contract for off-market purchase of company's own shares), and

(c) subsections (2) and (3) of section 700 (shareholder authorisation required for release of company's rights under contract for off-market purchase of company's own shares).

Authority for off-market purchase for an employees' share scheme

6. In section 693(1) of the Act (authority for purchase of own shares), after "by an off-market purchase," insert "authorised in accordance with section 693A or".

7. After section 693 of the Act, insert—

"**Authority for off-market purchase for the purposes of or pursuant to an employees' share scheme**

693A.—(1) A company may make an off-market purchase of its own shares for the purposes of or pursuant to an employees' share scheme if the purchase has first been authorised by a resolution of the company under this section.

(2) That authority—

(a) may be general or limited to the purchase of shares of a particular class or description, and

(b) may be unconditional or subject to conditions.

(3) The authority must—

(a) specify the maximum number of shares authorised to be acquired, and

(b) determine both the maximum and minimum prices that may be paid for the shares.

(4) The authority may be varied, revoked or from time to time renewed by a resolution of the company.

(5) A resolution conferring, varying or renewing authority must specify a date on which it is to expire, which must not be later than five years after the date on which the resolution is passed.

(6) A company may make a purchase of its own shares after the expiry of the time limit specified if—

(a) the contract of purchase was concluded before the authority expired, and

(b) the terms of the authority permitted the company to make a contract of purchase that would or might be executed wholly or partly after its expiration.

(7) A resolution to confer or vary authority under this section may determine the maximum or minimum price for purchase by—

(a) specifying a particular sum, or

(b) providing a basis or formula for calculating the amount of the price (but without reference to any person's discretion or opinion).

(8) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this section.".

8. In section 694 of the Act, at the beginning of subsection (1) insert "Subject to section 693A,".

9. In section 704 of the Act (no assignment of company's rights to purchase own shares), after "a contract authorised under—" insert—

"(za) section 693A (authority for off-market purchase for the purposes of or pursuant to an employees' share scheme),".

Payment out of capital for purchase of own shares for an employees' share scheme

10. In section 712(7) of the Act (determination of available profits), after "the period of three months ending with the date on which" insert "the solvency statement is made in accordance with section 720A or".

11. In section 713(2) of the Act (requirements for payment out of capital), after "subject" insert "to section 720A and".

12. After section 720 of the Act, insert—

"Requirements for payment out of capital: employees' share schemes

Reduced requirements for payment out of capital for purchase of own shares for the purposes of or pursuant to an employees' share scheme

720A.—(1) Section 713(1) does not apply to the purchase out of capital by a private company of its own shares for the purposes of or pursuant to an employees' share scheme when approved by special resolution supported by a solvency statement.

(2) For the purposes of this section a resolution is supported by a solvency statement if—

(a) the directors of the company make a solvency statement (see section 643) not more than 15 days before the date on which the resolution is passed, and

(b) the resolution and solvency statement are registered in accordance with section 720B.

(3) Where the resolution is proposed as a written resolution, a copy of the solvency statement must be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the member.

(4) Where the resolution is proposed at a general meeting, a copy of the solvency statement must be made available for inspection by members of the company throughout that meeting.