

## Treatment of own shares held by or on behalf of a PLC

1040. (1) Subject to section 1041 (5), this section applies to a PLC—

(a) where shares in the PLC are forfeited, or are surrendered to the PLC in lieu of forfeiture, in pursuance of Part 3 or its constitution for failure to pay any sum payable in respect of those shares,

(b) where shares in the PLC are acquired by the PLC otherwise than by any of the methods mentioned in section 102 (1) and the company has a beneficial interest in those shares,

(c) where the nominee of the PLC acquires shares in the PLC from a third person without financial assistance being given directly or indirectly by the PLC and the PLC has a beneficial interest in those shares, or

(d) where any person acquires shares in the PLC with financial assistance given to him or her directly or indirectly by the PLC for the purpose of the acquisition and the PLC has a beneficial interest in those shares.

(2) In determining for the purposes of subsection (1)(b) or (c) whether a PLC has a beneficial interest in any shares, there shall be disregarded, in any case where the PLC is a trustee (whether as personal representative or otherwise), any right of the PLC (as trustee) to recover its expenses or be remunerated out of the trust property.

(3) Unless the shares or any interest of the PLC in them are previously disposed of, the PLC shall, not later than the end of the relevant period after the date of their forfeiture or surrender or, in a case to which subsection (1)(b), (c) or (d) applies, their acquisition—

(a) cancel them and reduce the amount of the share capital by the nominal value of the shares, and

(b) where the effect of cancelling the shares will be that the nominal value of the PLC's allotted share capital is brought below the authorised minimum, apply for re-registration as another type of company, stating the effect of the cancellation,

and the directors may take such steps as are requisite to enable the PLC to carry out its obligations under this subsection without complying with sections 84 and 85, including passing a resolution in accordance with subsection (5).

(4) The PLC and, in a case falling within subsection (1)(c) or (d), the PLC's nominee or, as the case may be, the other shareholder, shall not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void.

(5) The resolution authorised by subsection (3) may alter the PLC's constitution so that it no longer states that the company is to be a PLC and may make such other alterations in the constitution as are

requisite in the circumstances.

(6) Without prejudice to the generality of subsection (5), where the resultant company type is a private company limited by shares, the alteration referred to in that subsection shall include the replacement of the memorandum and articles of the re-registering company by a constitution in conformity with section 19 and Schedule 1 (but nothing in this section authorises the alteration of the rights and obligations of members of the re-registering company, or of other persons, as set out in its memorandum and articles and, accordingly, where necessary, the foregoing replacement constitution shall include such supplemental regulations as will secure those rights and obligations).

(7) The application for re-registration required by subsection (3)(b) shall be in the prescribed form and signed by a director or secretary of the PLC and shall be delivered to the Registrar together with a copy of the constitution of the PLC as altered by the resolution.

(8) If a PLC required to apply to be re-registered as another type of company under this section, fails to do so before the end of the relevant period, section 68 shall apply to it as if it were a private company limited by shares, but, subject to that, the company shall continue to be treated for the purposes of this Act as a PLC until it is re-registered as another form of company.

(9) If a PLC, when required to do so by subsection (3), fails to cancel any shares in accordance with paragraph (a) of that subsection or to make an application for re-registration in accordance with paragraph (b) of that subsection, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

(10) In addition to the resolutions which subsection (4) of that section provides that that section applies to, section 198 shall apply to resolutions of the directors of a PLC passed by virtue of subsection (3).